United States Court of Appeals for the Second Circuit



APPENDIX

75-7663

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket No. 75-7663

AJAX HARDWARE MANUFACTURING CORPORATION

Plaintiff-Appellant,

-v.-

INDUSTRIAL PLANTS CORPORATION

Defendant-Appellee.

On Appeal From The United States District Court For The Southern District Of New York

JOINT APPENDIX

VOLUME IV (Pages A-1007 through A-1306)

PORTIONS OF RECORD ON APPEAL

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MR. GARTNER: I don't know, your Honor. I don't think --

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THE COURT: You will have to decide it before Thursday?

MR. GARTNER: I don't think this is the time to decide it. We have motions pending and I intend to make additional motions.

THE COURT: I know. You have made a motion for leave to appeal. I am inclined to deny it but I shall decide it and write a short memorandum. I take it you

court that this Court should disqualify itself in this

I am amazed at his statement. What Mr. Stream actually said to me on the phone, and he repeated it several times, was that if I ask for a short adjournment, he would oppose it but if I asked for a long adjournment for the case to go over to the fall he would not oppose it. That's what I was relying upon. And I am asking for this case to go over to the fall.

THE COURT: What about that, counsel?

MR. STREAM: My recollection is I said a short adjournment, certainly not a long adjournment.

MR. GARTNER: That's absolutely false. Absolutely false.

of you would tell me falsehood, that's true. But after a firm date set by the Court, this is one of the old cases and they are trying to get rid of old cases.

This is a '69 filing.

MR. GARTNER: If your Honor please, I am trying to avoid what would be to me a very unpleasant task and that is to move under Rule 455. I am suggesting --

THE COURT: Rule 455?

MR. GARTNER: No, 28 U.S.C. Section 445.

1 am trying to avoid that, your Honor, and it seems to
me that the way in which these proceedings this morning

are being conducted amply demonstrates that your Honor is not the judge to try this case.

As the plaintiff in this action, your Honor, we are entitled to a fair trial and we have not been given an opportunity. We were forced on to the first trial despite the fact that witnesses were not available and we did the best that we could in that trial. Now your Honor is suggesting that you are going to force us on to a second trial without any witnesses and without having made any effort —

THE COURT: You have the record, counsel.

MR. GARTNER: Without having made any effort, your Honor, to find out what my situation was, whether I was available for trial and I am telling your Honor I am not available for trial on that date. I have firm commitments to other clients which I must honor. I cannot simply interrupt my schedule because I get a letter in the mail from your Honor without any opportunity to consult about it, without any concern for our situation.

THE COURT: Well now, let me say a word, if I may in between. Obviously I suspected and thought that you wanted a quick trial after this situation so that it would not delay the possible recovery here.

Secondly, you had a note from me as to the

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

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MR. GARTNER: But in the second place, your Honor, I have had enough experience with this Court and with its procedures to know that it would be completely futile for me to call up and say that I cannot try a case on a date that your Honor has set. I have done that so many times and have been rebuffed so many times. I have asked for a one day adjournment ten days in advance of the trial and I have been refused.

THE COURT: Yes, and you went to the Court of Appeals and mandamoused me and they denied it more or

am proceeding.

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MR. STREAM: I would like to have my say.

THE COURT: I don't think it's proceeding properly if you interrupt your adversary.

MR. STREAM: I suggest, your Honor, counsel is trying by coming as close to contumacy as possible to aggrevate this Court so as to support his expectation under the section he referred to which, although not before me, evidently is meant to provide a relief in the case of a biased or prejudiced judge. I see no reason why this Court should rise to that bait and I don't think the Court is.

I am ready to try this case. I am prepared to agree to a short adjournment if counsel insists and the Court is willing but I listened to this Court's directions and when it says be ready I'm ready.

THE COURT: May I ask you this. You can say yes, you can say no. Do you object to the delay until fall? I am willing to grant a few days adjournment long enough to get your witnesses here.

MR. GARTNER: I can't get them here, your Honor.

THE COURT: If you can't get them here, why do you want an adjournment?

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THE COURT: I thought you could decide that without too long a deliberation.

MR. GARTNER: The problem, as your Honor knows,

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SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

1 lzjw 2 THE COURT: Do you want to go out and talk --3 MR. GARTNER: No, I want to talk to your Honor if your Honor will listen for a minute. 4 5 THE COURT: Of course I will listen. I 6 always listen. MR. GARTNER: This is one of the difficulties 8 of trying a case before your Honor. Your Honor does not 9 want to take the time for deliberation on difficult 10 questions. 11 THE COURT: Take your time. How long do 12 you want to deliberate on that last proposition? 13 MR. GARTNER: It is not a question of how 14 long I want to deliberate. It's a question of how long your Honor will deliberate on these questions. 15 13 THE COURT: Why don't you try to answer 17 my questions instead of constantly criticizing me. I think it's outrageous, counsel. 18 19 MR. GARTNER: Your Honor, we have been 20 served just five minutes ago with a response to our motion which we served on the defendants --21 THE COURT: What's that got to do with this question?

MR. GARTNER: Your Honor has already indicated that you are going to deny our motion without having seen

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their papers and without giving us a chance to respond to their papers -- that's exactly --

THE COURT: Wait a minute. Will you please listen a minute. Go out and read the papers and come back here in five or ten minutes and state whatever you want to state and reply to those papers. That's all I've got to say.

MR. GARTNER: I don't think I should be put under that kind of pressure to be forced to read papers in five minutes and come back and make a response. in five minutes. These are very serious questions.

o'clock and I'm not going to spend all this time on formalities, counsel. If you want, I shall adjourn this motion, if you want, to tomorrow at a quarter of ten.

I'd hate to do so and you ought to pay something to counsel to come again.

MR. STREAM: Your Honor, may I point out to the Court we were served with these motion papers last Thursday afternoon. We worked all through the weekend in preparing our opposition to them. This Court, as long as the verdict is set aside, has every right, and I really need not say that, I apologize for saying that, has every right to require counsel to decide now whether

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or not this case is going to start on Thursday. I would like to know today if it is going to start on Thursday.

MR. GARTNER: Your Honor --

THE COURT: Keep quiet. Give him a chance. You deliberately interrupt him.

MR. GARTNER: I didn't deliberately --

THE COURT: Then casually.

MR. STREAM: My research thus far indicates that even if this Court were to certify its order, even in that unlikely situation, the Court of Appeals has held it is not appropriate to stay a retrial and that this case should proceed to retrial nevertheless if the proceedings were mooted, they were mooted. So I do think it's only fair for counsel to tell his Honor now whether he agrees to a fall postponement and waives interest during the interim period or doesn't agree.

And if he doesn't, then your Honor will have time enough to read these papers before Thursday when the case is meant to start.

THE COURT: I think that's a fair statement.

MR. STREAM: I am going to be on trial before a New York Supreme Court Judge

in ten minutes and coming here tomorrow will be very difficult for me without disturbing that judge's schedule.

MR. GARTNER: All of these decisions have to be made within five or ten minutes when the Court -- if the Court had given more time to some of these decisions, we wouldn't be here.

THE COURT: That's a nasty remark.

MR. GARTNER: It's not a nasty remark, your Honor. It's the way I see it. When I asked for an additional fifteen minutes in my summation I was summarily denied it three times and I suggest to your Honor that perhaps if the issues had been stated to the jury more clearly we wouldn't be here.

THE COURT: I am not commenting on that at all. I refuse to take any responsibility for that, counsel.

When are you going to decide about this application for fall on the condition I mentioned?

MR. GARTNER: I'll accept that condition under protest, your Honor.

THE COURT: All right.

MR. GARTNER: I am not waiving my right to move for the disqualification of the judge in this case.

THE COURT: I don't mind that at all. But you do stipulate to adjourn the case and you stipulate in consideration of that that interest from today on will be waived. Do you, sir?

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Is it about the Ajax case?

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MR. GARTNER: No, it is not. It is about

1	UNITED STATES DISTRICT COURT
2	SOUTHERN DISTRICT OF NEW YORK
3	x
4	AJAX HARDWARE MANUFACTURING CORP., :
5	Plaintiff : 69 Civ. 1900
6	v. :
7	INDUSTRIAL PLANTS CORP., :
8	Defendant :
9	x
10	September 12, 1975,
11	Before:
12	
13	Hon. Richard H. Levet, District Judge.
14	Appearances:
15	POLETTI, FREIDIN, PRASHKER, FELDMAN & GARTNER, ESQS.,
16	777 3rd Avenue New York, N.Y., 10017
17	Attorneys for Plaintiff By: Edward Brill, Esq.
18	MONASCH, GHAZEN & STREAM, ESOS.
19	733 3rd Avenue, New York, N.Y. 10017
20	Attorneys for Defendant By: Arnold Stream, Esq.
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immediately. I hope that satisfies you.

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MR. BRILL: Well, it would in order to support an order to show cause he would have to make some written showing of the grounds, your Honor.

THE COURT: He is going to make them orally and under the circumstances I think it is necessary because of the imminence of retrial of this case.

MR. BRI'L: Well, two days ago he could have made that order to show cause and I would have had two days to prepare this hearing.

THE COURT: You will be able to prepare if there is anything you want to do to opposite it.

This discussion in Pennsylvania in the District Court says in substance that although an affidavit is not indisposable, it is better practice. Well, I'll agree with that. Now Mr. Stream, will you rise and the clerk will swear you

ARNOLD STREAM, attorney for defendant, sworn by court clerk.

THE CLERK: State your name for the record and spell your last name.

MR. STREAM: Arnold Stream, S-t-r-e-a-m.

If the Court pleases, we have served upon the attorneys for the plaintiff a notice requesting production

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of documents pursuant to Rule 34. Service of that notice was made on September 10th. The original counterpart was delivered to the court. The notice to produce under Rule 34 called for the production of certain documents which I will describe in a minute. On October 10, 1975, we specified that date in conformity with requirement of the mentioned rule that the opposite party have 30 days to answer or to object to the discovery. The rule, however, also permits an application to be made to shorten the time for discovery and pursuant to that provision of the same rule, we served a notice in letter form of our intention to move this court for a shortening of the period of time in which to produce the records described in our notice for production. That letter, notice of motion, was served by hand on September 10th.

The plaintiff has two days' notice of that intended motion. The reason why we make the motion, your Honor, is the evident one, this case is on the verge of trial and if the discovery isn't held quickly, it will impede the forward progress of the litigation. I might point out that this belated discovery on our part was brought about by our learning early this week for the first time of the existence of a file in a government office which disclosed the following facts: A, that Ajax as prime contractor and

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Time & Micro as a subcontractor, were engaged by a government agency to perform a contract involving the production of fuses and timing mechanisms for fuses at the Strasburg plant of Time & Micro.

THE COURT: Is that in Pennsylvania, is it?
MR. STREAM: Yes, sir.

B, that the contract was aborted shortly after it was signed. C, that the plaintiff filed a claim--

THE COURT: What do you mean aborted?

MR. STREAM: The contract was terminated. C, upon information and belief, a termination claim was filed by Ajax with the government seeking the recovery of its damages by reason of the termination of the contract and D, upon information and belief that the plaintiff in fact received recompense from the government for its termination claim. All those facts of course --

THE COURT: How does that -- I'm a little bit in the fog. How does that affect the cause of this action?

MR. STREAM: All of those facts, your Honor, bear upon the element of damage. Damage as the court, of course, realizes is financial loss to the party. The plaintiff in this action seeks to recover \$163,000 more or less, claiming that was its financial loss. If we can demonstrate as we believe we can, that the plaintiff has

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recouped 100 scme-odd thousand dollars of that financial loss by a recovery from the government on its termination claim, then its damages are almost de minimus in this action and indeed may be erased completely. Since the plaintiff has the burden of proving damages we have a right to place in issue the question of financial loss.

THE COURT: I understand that. But I'm a little bit uncertain how that enters into damages between this plaintiff and this defendant. Will you explain that?

MR. STREAM: Yes. We have reason to believe, your Honor, that the claim which was made by Ajax against the government was based upon its economic involvement in the very transaction that brings this case before the court, namely, the financing of Time & Micro in order to place it in a posture so it could perform the government contract. That financing --

THE COURT: That is, the guarantee was of that character?

MR. STREAM: Precisely. So, your Honor, the exposure of the plaintiff under that guarantee is a part-understand, I speak on information and good belief, we understand that the principal element of the government claim is the exposure of the plaintiff to that economic loss for which they did receive, we understand, a substantial recovery

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from the government. If we can prove that then of course even assuming the plaintiff was able to sustain its case under any one of its causes of action its damages would have to be rebuffed by the amount rebated by this company, because it would not suffer for the loss alleged. The possibility is of particular significance, the plaintiff

Murray Gartner, in which he states as a fact, not upon

in this action was verified by plaintiff's trial counsel,

information and belief, but as a fact --

THE COURT: Which paragraph is this?

MR. STREAM: In paragraph 16, and again in paragraph 12 --

THE COURT: About damages?

MR. STREAM: Yes. Yes, paragraph 12, that sum of \$161,895.75, "constitutes the damages suffered by plaintiff." And then the sentence after that. So for these reasons, your I nor, we have made demand upon the plaintiff.--

THE COURT: Where are these papers that you seek to discover?

MR. STREAM: Where are they?

THE COURT: Yes.

MR. STREAM: These papers are at the Rock Island Arsenal of the U.S. Army, Armament Command, in Rock Island, Illinois.

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2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	x
5	AJAX HARDWARE MFG. CORP.,
6	Plaintiff, :
7	-against- : 69 Civ. 1900
8	INDUSTRIAL FLANTS CORP., :
9	Defendant. :
10	x
11 .	Before:
12	HON. RICHARD H. LEVET,
13	District Judge
14	New York, October 2, 1975 Room 2103 - 10:00 a.m.
15	APPEARANCES
16	
17	POLETTI, FREIDIN, PRASHKER, FELDMAN & GARTNER, Esqs., Attorneys for the Plaintiff,
18	By: EDWARD BRILL, Esq., of Counsel
19	MONASCH, CHAZEN & STREAM, Esqs.,
20	Attorneys for the Defendant, By: ARNOLD STREAM, Esq., of Counsel
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examination at that time.

When I talked to Mr. Sinclair's office earlier in the week I was told he had court commitments during the week of the 14th. It turns out that he does have a possibility of appearing here some time late in that week.

THE COURT: All right, do that. I think that is the bestthing to do.

Will you state which of your witnesses you wish to call personally, that is live witnesses.

MR. STREAM: At the most I will call Mr. Kreiser, but depending upon how the plaintiff's case goes in, I may waive the calling of any witnesses and rest when the plaintiff completes his case.

THE COURT: That is up to you. That is a future determination for you.

MR. STREAM: I may call Mr. Kreiser and if I don't it's because I choose to rest on the plaint1 f's case.

MR. BRILL: One of the other things I think we have to resolve is the question of the exhibits which were admitted at the first trial. There were certain exhibits dealing with damages which were admitted at the first trial without an authenticating witness and if I can submit those

THE COURT: On requests to charge, Mr. Stream filed his today.

> When will you have yours ready, Mr. Brill? MR. BRILL: Can I have a copy of his requests?

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MR. STREAM: I don't want to deliver my requests to charge to my adversary until the plaintiff's case is in. Under the rules I have that option.

THE COURT: You have that privilege.

You may get yours in by Wednesday of next week. Well, can you get them in by next Thursday? Make it then.

You each now have knowledge, I believe, and you can check me, as to the live witnesses who are to be called, and what shall I assume about the testimony that is to be read? Is there any other testimony that may be read by each side?

MR. STREAM: I think it would be a much more manageable presentation if when the plaintiff opens his case and presumably starts to read from Mr. Thaler's deposition if he read the entire deposition instead of chopping it up in which case I have to go and fill it in, but I can't compel him to do that. I can simply suggest that it's a more orderly way of doing the job.

MR. BRILL: I am prepared to designate the pages that I intend to read by the middle of next week.

THE COURT: Whose deposition?

MR. BRILL: Mr. Thaler's deposition.

THE COURT: Do it by next week in writing.

MR.BRILL: Mr. Stream can respond as to those

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FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

changing it, however. I think substantially it will have

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documents are concerned they bear directly, absolutely

frontally, upon the issue of the amount of damages to

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which the plaintiff is entitled if the case reaches that point. I have made or I have given notice of intention to amend the answer only to the extend of adding, as an affirmative defense, waiver, and I will support that with a memorandum of law for the Court next week and that waiver is based upon --

THE COURT: That is on the payment.

PR. STREAM: No, that is on the fact that the plaintiff accepted the appriasal, knew what it was getting, paid for it, and it can't say it's a breach. That has been in the case from the beginning. It raises no new fact issues.

THE COURT: It raises a legal issue.

MR. STREAM: Yes, which we propose to interpose in the trial.

THE COURT: You are filing a memorandum on that?

MR. STREAM: Yes.

Insofar as the documents which counsel is talking about -- these documents on payments -- are concerned, when we make the offer the Court will see how relevant they are and if counsel wants to object on the ground of relevance then the Court at that time will admit them or exclude them. That is the time.

THE COURT: I don't want to have any question

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of failure to plead this, that is all.

MR. STREAM: It's my view of the law that we are not pleading payment. This is a mitigation of damage matter and I am giving counsel fair notice in my

THE COURT: You have been at least put on notice that there is some degree of claim about these government

MR. STREAM: We take the position that plaintiff has to prove that it's been damaged and damage means financial loss and we intend to try to prove that the plaintiff has suffered no financial loss.

In other words, what it amounts to is that in these matters, I don't say they are, but there may be mitigation

MR. STREAM: And that need not be pleaded as

THE COURT: Mitigation of damage never has to be pleaded, does it?

MR. BRILL: Under the substantive law of New York and under the governing federal rules it does.

MR. STREAM: Then I propose to serve an order today to amend that.

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it.

THE COURT: I am inclined to eventually grant

MR. BRILL: Aside from the specific question of whether ornot it has to be pleaded, your Honor, the whole question of mitigation was discussed for months prior to the working out of a pretrial order which did set forth certain aspects of mitigation.

THE COURT: That has no significance at this point, counselor, in my book.

MR. BRILL: I am under the impression that the pretrial order still governs the action of this case.

THE COURT: The pretrial order, as I have said, is not a straitjacket.

MR. STREAM: I am going.

THE COURT: I am going to move at the same time to amend it to that extent. We are not going to get lost in a covey of theoretical flourishes.

MR. BRILL: We have to know what the procedures are --

THE COURT: I am not going to forbid it because it's in the pretrial order.

MR. BRILL: We are not at the stage where we should have secrets from each other. I want to know what it is Mr. Stream wants to claim.

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MR. STREAM: I will make it very clear.

In the words of our former president, I will make it perfectly clear.

I am going to move to amend at the time of trial to state and add a defensive waiver on the contract cause of action.

MR. BRILL: You have already done that.

MR. STREAM: I have served the notice and I am going to move for the granting of that request. Later today I shall serve you with a notice of an amendment that will plead an additional defense of mitigation of damages.

THE COURT: Failure to mitigate.

MR. STREAM: Or the fact that they did mitigate and abate the damages. I don't think it has to be pleaded but I am going to plead it because I want counsel to be absolutely clear that I intend to put him to his proof that the plaintiff suffered loss.

I have evidence here that the plaintiff received the sum of \$249,000 from the United States Government in connection with the operation of the time in microfacility and I intend to use that evidence in support of that defense.

That is one of the issues in the case, your

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UNITED STATES DISTRICT COURT SOUTHE N DISTRICT OF NEW YORK :Before: AJAX HARDWARE MFRG. CORP., :HON. RICHARD H. LEVET, D.J., 3 and a Jury Plaintiff : 5 vs. : 69 CIVIL 1900 6 INDUSTRIAL PLANTS CORP., : 7 Defendant. : 8 9 10 New York, OCTOBER 14,16,17,20, 1975 OCTOBER 21,22,23, 1975 11 12 13 14 15 16 17 18 19 20 21 STENOGRAPHER'S MINUTES 25

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(Robing room conference)

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THE COURT: I considered it appropriate that I decide this motion of Mr. Stream with respect to amend the answer in the pretrial order. The defendant has moved pursuant to rule 15-A of the Federal Rules of Civil Procedure to amend its answer to include the additional affirmative defenses of mitigation and waiver and to amend the pretrial

respect to these additional defenses accordingly. note at the outset that under Rule 15-A amendments of pleadings require leave of the Court but they shall be freely given when justice so requires. As to the affirmative defense of mitigation the defendant argues and the Court agrees that the defendant is justified on the basis of the new and discovered documents and factual admissions which are referred to in the stipulation between the attorneys dated September 30, 1975. Such documents and admissions put in issue the partial or complete mitigation by plaintiff of its alleged damages in this action. The Court is not at this time ruling on the relevancy of these documents and admissions. However, I believe that Rule 15-A requires that the defendant be permitted to assert this additional defense and have the opportunity to prove during the trial any mitigation by plaintiff.

As to the plaintiff, plaintiff cannot be prejudiced

by the granting of this application because the documents and all of the data reflecting the admitted facts were in the exclusive possession and control of the plaintiffs since the institution of this action. Therefore, the respective motions to amend the answer to add the defense of mitigation and to amend the pretrial order with respect to this defense as set forth in the respective notices of intention to amend are hereby granted and so ordered. However, with respect to the affirmative defense of waiver the defendant, I believe, has failed to demonstrate any new facts or authority which makes such amendments necessary under the law in this state waiver as defined as the free and voluntary and intentional relinquishment or alandonment of a known existing legal right, advantage, benefit, claim or privilege which except for such waiver the part I would have enjoined. 21 New York jurisprudence, the waiver section 88, the cases cited therein. Mere payments I believe for performance which has been rendered does not necessarily constitute waiver of any claims which may arise from defects in the performance, Armstrong Cork and Installation Company against Pirone 139 Miscellaneous 819 and 10 New York jurisprudence, contracts such 349. Waiver must be shown by a clear unequivocal and decisive act of the party, 21 New York jurisprudence Sec tion 93. No facts were introduced at the first trial to show

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such clear unequivocal and decisive acts or voluntary and intentional relinquishment by plaintiff. The Court properly charged then that payment by plaintiff did not constitute waiver of any claims under the contract. If new facts are forthcoming from defendant, failure to disclose these as of this late date would be clearly prejudicial. fact, this unexplained delay by defendant in seeking to amend the answer and pretrial order to include his defense of waiver so long after the commencement of the action is sufficient ground in itself to deny these proposed amendments and I, therefore, must deny them.

I am going to give this other statement requested to the jurors before you make your opening statements, gentlemen.

MR. BRILL: Before the opening statement, with respect to your ruling on the amendment to the answer concerning mitigation of damages --

THE COURT: You submitted everything in your paper.

MR. BRILL: I have but you said you were not ruling on the relevancy at this time of the facts only permitting amendment of the answer.

THE COURT: Which may permit the introduction of facts which relate to that defense. That comes in and must

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come in when the evidence is produced and I am not going to rule now if that i what you are driving at.

MR. BRILL: I am not asking you to rule on that.

I am asking you to rule that no mention be made of any such facts in the opening statement until ruling is made on relevancy.

THE COURT: Why should that be?

MR. BRILL: Until this very moment Mr. Stream has not told us any theory under which those documents of payments can be put into this case.

THE COURT: I think he has illumined it quite adequately.

MR. BRILL: I would like to read of the transcript before this Court on September 12th when this Court said to Mr. Stream after Mr. Stream said that he knew these documents were in existence you said, Mr. Stream, I don't understand how these documents can be relevant to damages in this case," and he said, "Well, your Honor, the only reason is that because Ajax submitted a claim and received payment for the loan guarantee loss."

If that is what he is claiming that is one thing.

If that is not what he is claiming I am entitled to know what it is he is claiming so I can make some statements about that in my opening statement; otherwise, there is

Jq/lf prejudice. Furthermore, there is prejudice in that suddenly 3 if during his case he does raise other issues with respect to these documents aside from the contention that we received 5 payments for the loan guarantee loss that means the plaintiff 6 suddenly has to consider submitting counter evidences or 7 calling new witnesses in the middle of the trial. THE COURT: As to what? 9 MR. BRILL: As to whatever the argument is he is 10 going to make. He may say we have to explain each and every 11 item in these documents. We are not prepared to do that, to 12 show we suffered the losses. 13 THE COURT: You had notice of the papers. 14 MR. STREAM: You bet he did. 15 MR. BRILL: We never had notice as to what the 16 argument is. 17 THE COURT: I don't think he needs to do that and 18 I am going to so rule. That is that. I don't have to 19 forecast and neither does he. 20 MR. BRILL: He has to make some statement as to what 21 the relevance is or we are going to spend another seven days 22 in a neutral effort again. 23 THE COURT: I don't think so. I think the Court 24 will be able to determine what is relevant and what is not 25 relevant. You may make your objections, your pertinent objec-A-1049

tions in due time.

(In open court - jury present)

THE COURT: Members of the jury, before opening statements are made here by the respective attorneys, I have been asked by the attorneys to read the following:

about to be tried by the parties, has been tried once before and in the course of this trial there may be references from time to time to the prior trial for one reason or another. The fact that there was a prior trial and the legal reasons why this case is being tried again have no bearing on your determination of the issues which will be presented to you in this trial. I mention the fact as of this time only so that you will understand such references as are made to the prior trial but at the same time I caution you that you may not speculate concerning the earlier trial nor consider it in any respect. I take it that that is satisfactory to both counsel.

MR. STREAM: Yes, your Honor.

MR. BRILL: Yes, your Honor.

THE COURT: All right.

I want to say a word about opening statements which are about to be made by each attorney. These, members of the jury, are expressions by each side here, plaintiff and

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over the next several days you will know where it is that they fit in into the pattern, into the framework of the 3 entire case. For those of you who may be sitting on a jury 5 for the first time, let me simply describe to you what will 6 be happening today and in the next several days. After I 7 complete the opening statement on behalf of the plaintiff, 8 on behalf of Ajax, Mr. Stream will speak to you. He will 9 give the opening statement on behalf of the defendant, 10 Industrial Plants Corporation. Following the opening state-11 ments we will immediately begin with receipt of evidence, 12 with live witnesses on the stand and as the judge has said 13 with reading to you from certain pretrial depositions which 14 have been taken in this case and with the presentation to 15 you of certain documents and exhibits. At the conclusion 16 of the receipt of the evidence you will then hear closing statements on behalf of the defendant by Mr. Stream and on behalf of the plaintiff by myself and then the Court will instruct you on the law which you are to apply and you will

Let me first begin by introducing the parties in this case. The plaintiff, my client, Ajax Hardware Manufactur+ ing Corporation, a California company located in Los Angeles, primarily in the business of manufacturing metal products, cabinet hardware and other types of hardware. The defendant,

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retire to reach a verdict in this case.

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Industrial Plants Corporation, located here in New York, a professional and expert appraisers of industrial machinery and equipment, also specialists and experts in the liquidation and auction sale of entire industrial plants and in used machinery and equipment. What is this case about? case really arises out of a series of events that took place some nine years ago, believe it or not, 1966. It's a long time ago. In August of that year my client, Ajax, retained the services of the defendant, Industrial Plants Corporation to make an appraisal of certain machinery and equipment and my client, Ajax, relied on this appraisal, relied on the advice and value supplied by the defendant in entering into a business transaction which I will describe in a minute more detail. Later on we discover that the defendant had never really done an expert appraisal of its own at all. In fact, the assurances they gave us, the representations which they made which you will see as to the value of this machinery, the scarcity of it, the desirability of it, the difficulty in obtaining this machinery were all simply false. It wasn't based on any appraisal or inquiry at all. It will show you that Ajax lost a substantial sum of money in this business transaction which I will describe. lost this money because the value of this machinery was not, in fact, what the defendant, the expert appraiser who we re-

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lied on had told us and assured us it was and would be. So that plaintiff in this case is asking you, the jury, to hold the defendant, supposedly a professional and supposedly an expert in this area of machinery and equipment appraisal. to hold it responsible for the false advice which they gave us and for the advice which they gave us which we found out was not really based on any appraisal at all. We have three different claims, as the judge will describe to you, I am sure, in his charge. Essentially either that the defendant breached its contract with the plaintiff, that is, that the defendant simply did not fulfill the appraisal agreement as it had agreed to. Secondly, that they were negligent, that is, that they did not perform an appraisal according to the normal standards of professional appraisal practice. Thirdly that they committed fraud because they made false and misleading statements as to the value of this machinery, statements which we shall show the defendant had simply no reason to believe were true.

Before I describe and outline some of the events which took place let me mention some of the names that you can expect to hear during the course of this trial. For the plaintiff you will be hearing the name of a Mr. Howard Klein who was the executive vice president of Ajax during the events in question and you will also be hearing the name of

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a Mr. Norman Louis who was president of the plaintiff Ajax.

For the defendant you will be hearing the name of a Mr.

Jesse Thaler who was the vice president of Industrial Plants

Corporation and who was the appraiser involved in this situation. You may also hear the name of a Mr. Kriser who was another vice president and now the president of the defendant.

During the trial you may hear several additional names, Mr.

Martin Kaefer, who had made an appraisal of the same machinery and equipment in 1964, two years earlier. You will also hear the names of Mr. Arthur Sinkler and a Mr. George Sinclair who are expert witnesses whom the plaintiff intends to call on the general subjects of appraisal practice and specifically on the state of the watch manufacturing industry in this country.

Let me explain for a few minutes one of the events that took place which we intend to prove.

and in August, 1966, Mr. Howard Klein, the vice president of the plaintiff Ajax, met with Mr. Thaler, vice president of the defendant here in New York, to obtain the services of the defendant, Industrial Plants Corporation to perform an appraisal. Mr. Klein told Mr. Thaler, as you will hear, that Ajax was considering entering into a business relationship with a company known as the Time & Micro Company,

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formerly the Precision Instruments Company or Precision Time Company located in Strasburg, Pennsylvania. Time & Micro owned an idle watch manufacturing plant in Strasburg and Ajax at this time was considering making a bid on a government contract to manufacture fuses and Ajax had thought that it could use this plant, this idle watch plant to make certain timing mechanisms which would be used in connection with the fuse contract if it obtained the government fuse contract. But Time & Micro would be unable to enter into any agreement at all with Ajax, my client, unless it obtained a loan in the sum of approximately \$250,000 because, as you will hear, Time & Micro had a loan due in that amount to some third party which was about to foreclose on this machinery and equipment so that in order to maintain the availability of the equipment Time & Micro needed this loan of some \$250,00d. Ajax had considered that it would be willing to loan this money to Time & Micro or obtain a loan for Time & Micro in that amount but it wanted to know whether the machinery and equipment in the plant would be adequate as security for the loan. I am sure that most of you know what the word "collateral" means and that is that if Time & Micro couldn't repay the loan when it came due then the bank or Ajax would have to look to the assets of Time & Micro, to the machinery and equipment, to be sold or disposed of in

repay the loan, the interest on the loan and whatever expenses would be required in connection with the selling or disposal of the assets. So that Mr. Klein told this to Mr. Thaler in August, 1966, here in New York and he requested that Mr. Thaler appraise this machinery and equipment to determine whether the collateral value of this machinery and equipment would be sufficient to protect Ajax on the advance or guarantee of some \$250,000 which, as I said, would be secured by the machinery and equipment as collateral.

That will be Mr. Klein's testimony and his version of this agreement.

It's no secret Mr. Thaler's version of this agreement is different from Mr.Klein. He said he only agreed to perform an in-place valuation of the value of this plant as a going operation to make watches. One of the things you have to determine during this trial from the testimony of the witnesses, from the credibility of the witnesses, from the overall circumstances which you find to be present, is whether the contract is indeed as Mr. Klein says it was or whether it is as Mr. Thaler says. You will have to consider really whether it would have made any sense for Ajax to ask for an appraisal of a plant in place as a going concern if, indeed, Ajax was about to make a loan or guarantee

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A few more details about this meeting between

Nr. Klein and Mr. Thaler. Remember Mr. Klein represents

Ajax, Mr. Thaler represents the defendant. You will hear about a certain report called the Hirschmann report and remember I mentioned the name Martin Kaefer. Martin Kaefer is the individual who made the Hirschmann report which was an appraisal of the same machinery and equipment in the same plant done in 1964, two years before Ajax became involved with Time & Micro. But this earlier appraisal was not done for Ajax, it was done for the owner of the Time & Micro plant and he had given it to Ajax. Well, Mr. Klein had this two-year old appraisal report and he gave it to Mr. Thaler and there is no question about that but he told Mr. Thaler that we need the appraisal in a hurry, use this report as an inventory list to help expediate your appraisal. So that you know what all the machines are, make sure you cover all the machines. Mr. Klein will make it very clear that he did not tell Mr. Thaler to simply take this Hirschmann report, retype it and give it back to us under the defendant's

This is the agreement on August 12, 1966. Mr.

Thaler you will see agreed to do the appraisal. He went
down to the Time & Micro plant the following Monday, August

letterhead but more about that later.

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12th was a Friday, and he went down to the plant on Monday. He did nothing over the weekend to prepare on his appraisal on his own testimony which you will hear all he did was look at the machinery on Monday, see if it was there, see if it looked in good condition, it wasn't operating and he took the Hirschmann report which had values and he copied the values over or in some cases he increased them. In some cases he asked an employee of the plaintiff showing him around the plant what this employee thought the equipment was worth. If the employee said it was worth more than the Hirschmann report or less he wrote down what the employee told him. This was the appraisal, no other inquiry, no othe market search, no other research. You don't have to believe You will hear Mr. Thaler's own testimony as to what he did. The next day, August 16, '66, Mr. Thaler telephoned Mr. Klein with his preliminary results and said, "Mr. Klein, I have got a fair market value, \$900,000, you don't have to worry, the for sale value, \$500,000, no problem, you can guarantee a loan, this is great machinery." Mr. Klein said, "well, I appreciate your calling me but we have to have it in writing. Can you send me a telegram? If you can't get your formal report in time." The next day in August, 1966, you will see the telegram the defendant sent and you will have it read to you and you can examine it. He said fair

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market value, \$919,000. He said additional \$130,000 for the in-place value for a total in-place value of \$1,056,000. But he didn't stop there. He went on to give us assurances as to the unavailability of this machinery in this country, as to the demands for this machinery in this country. fact, he said this watch making machinery was not available unless manufacturers were members of a Swiss trust and then they had to wait two or three years for it. There wasn't a single plant in this country as well equipped as this plant. He said manufacturers in this United States would pay premiums over and above the values which he established in his appraisal if this was made available to them and he concluded finally that it was inconceivable that this machinery could be worth any less than 60 percent of the amount he told us it was worth at any time in the next two years. So on the basis of this telephone call and on the basis of this telegram which we received, which Ajax received, on August 18th Ajax entered into a preliminary agreement with Time & Micro in which we said, "Okay, Time & Micro, we are willing to loan you or obtain a loan or guarantee a loan for you in the sum of \$270,000. We are willing to do this no later than September 9th," which was approximately two, two and a half weeks from the time when they signed this preliminary agreement. On August 19th you will see that

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the defendant sent us its formal appraisal report listing the values of each item of machinery and equipment and in a covering letter signed by the defendant with the defendant's seal repeated again its conclusions as to the value of this machinery, the scarcity of the machinery, the demand for the machinery, the unavailability of the machinery, repeated that manufacturers would pay premiums for these items of used machinery and equipment and concluded again, this is a quote from their appraisal report: "It is difficult to project the market values of used machinery for the next two years. However, it is conceivable that the value would be less than 60 percent of the appraised figures that we have established." This is August 19th that they sent us their appraisal report. The report was not quite in the form that my client Ajax had expected it to be. Yes, we had received the assurances that we wanted but we wanted things spelled out a little more securely and a little -- a format more differently. You will see a series. of communications from my client, the president of Ajax to the defendant trying to clarify the terms that had been used. The assurances were terrific, you told us it's safe to rely on it but we want certain things done in the way we originally asked for them. These letters were sent, you won't see any responses from the defendant, no, but you will

hear about a series of telephone conversations again between Mr. Klein and Mr. Thaler in which Mr. Thaler said repeatedly, "Don't worry, it's great machinery and equipment, believe me I know, I have never seen anything like it," for sale value a minimum of \$500,000, liquidation value, whatever you want to call it, you can make a loan based on this machinery and equipment, don't worry. In fact, we were trying to pin them down and we said maybe you would be willing to make a guarantee buy-out for us so we don't have to worry at all. You will hear about a proposal, in fact, for a guarantee under which the defendant would have itself guaranteed a certain price, \$350,000 if this machinery and equipment had to be sold but you will also hear they wanted to charge us another \$17,500 for this guarantee after they already charged us some \$4400 for their appraisal in which they told us it was worth no less than 60 percent of \$900,000 over the next two years and no less than some \$540,000 but they wanted another \$17,000 for a guarantee. We didn't take the guarantee. Maybe we should have. We wouldn't be here in court today. But you will hear that not only did they offer to make the guarantee but they also said you don't have to worry, on August 30th they wrote us and said this appraisal is a sound and scientific evaluation of the assets in question. You don't have to worry about the authenticity

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and reliability of our appraisa? report. If you went to go ahead and guarantee the loan, you are going to go ahead and guarantee the loan or make the loan, this is a reliable appraisal report, this is a scientific appraisal report, not that this is a hurry job or copy or somebody else's appraisa report. That was on August 30th when they sent us that letter. On September 1st, two days later, Ajax took the final step and committed itself, it signed the guarantee of the loan in the amount of \$270,000 from a bank in Los Angeles to the Time & Micro Company which was the company that owned this idle watch manufacturing plant. Some of you can probably guess the next step in the story. Time & Micro was unable to repay the loan when it came due the next Business deals that had been contemplated January. between Ajax and Time & Micro had not come to fruition by that point. So that the bank was left holding this machinery and equipment as collateral, Ajax was standing by obligated under its guarantee. In January the loan was defaulted. In August, some seven or eight months later the bank and Time & Micro retained the services of the same defendant in this case, Industrial Plants Corporation, to dispose of the machinery and equipment at a public auction which was to be held in October, nine months after the default. Ajax didn't retain them. They were retained separately, really

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not out of the appraisal contract but a separate contract.

The auction was rublicized beforehand, brochures were sent out, catalogs were sent out, advertisements were taken out and the auction was held. When this machinery which they valued at over \$1,000,000 which they said would be worth no less than 60 percent of the individual values over the next two years or no less than \$540,000 which they told us go ahead it's worth at least \$500,000, make a loan on it, this machinery was sold at auction for just over \$140,000. All of it wasn't even sold. The part that wasn't sold at the auction was later sold several months later for another \$20,000. So that as you can probably figure out, 140 plus 20 is 160 and the loan was 270 plus interest plus legal expenses, plus auction expenses, expenses of the defendant in running the auction, other miscellaneous expenses, the bank turns to Ajax and says you have a guarantee and Ajax pays \$161,895.95 to the bank in May, 1968.

Before I conclude I just want to see if I can focus your attention on what I think to be the three key points in this case. Number one, you will have to determine what was the appraisal agreement between Mr. Klein and Mr. Thaler, between Ajax and Industrial Plants Corporation.

What was the purpose of the appraisal and I ask you to remember one simple word and that word is collateral because

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Mr. Klein will testify that he asked for an appraisal to be done of the value of this machinery and equipment as collateral for a loan which Ajax was considering. Fine. You say I don't want to believe Mr. Klein. You don't have to believe Mr. Klein because you are going to hear Mr. Thaler's own testimony and he testified yes, indeed, Mr. ! ein told him that the appraisal was needed in connection with financing which would involve this machinery as collateral. We think it's very imple because we will show you that the appraisal of machinery and equipment as collateral for a loan means one thing. It means the appraisal of the liquidation value of the for sale value of the minimum sound value that somebody can expect to get if this equipment has to be disposed of to repay the loan and we are not talking about necessarily running out the next day and selling it at auction or giving it away to the first person that comes around. We are talking about liquidating it. It was sold nine months after the loan was defaulted on. But still we are talking about collateral. We are talking about for sale value, liquidation value and we will show you that this so-called in-place or going-concern value which they claim constituted the entire appraisal agreement makes no sense at all if an appraisal was to determine --

THE COURT: I don't like to interrupt you but you A-1064

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have gone about 25 minutes out of your 30.

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MR. BRILL: I will be finished within five minutes.

THE COURT: Please do.

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MR. BRILL: This in-place value makes no sense at all if the appraisal was intended to determine a collateral value for a loan and the second point is did the defendant even really make an appraisal. Again, we will read to you from defendant's own testimony, from Mr. Thaler's own testimony. He was the appraiser. What did he do? He spent one day examining more than 600 machines. He didn't turn any of them on. He didn't make any inquiry as to the demand of these machines, as to their original costs and replacement In fact, all he did was simply copy in many instances, simply increasing the values from each machine as they were furnished to him on this two-year old appraisal and gave it back to us really in the very same order, listed the same way that we had given it to him and in some cases accepting the values that he had received from our own employee showing him around the plant. Nonetheless defendant said not that this is a hasty appraisal or that this is some sort of tentative appraisal, this they said was their sound and scientific and reliable appraisal. We will show you that what he did does not meet any standards of professional and

expert appraisal practices.

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MR. STREAM: I don't mind counsel continuing as far as he wants to but he is summing up.

THE COURT: Yes, coursel. The time will come when you will each have your summation.

MR. BRILL: I am almost finished.

THE COURT: Your time is just about up.

MR. BRILL: I hope another minute to make up for this interruption, your Honor, What if the defendant had made a proper appraisal and we will show you that if the defendant had made any inquiry, any check as it should have done into the market for this machinery it would have found that the machinery, the plant was practically worthless, that it couldn't be sold either as a plant or as individual items of machinery and equipment, that it's affirmative statements as to the value of this machinery, the scarcity of it, the Swiss watch trust, the demand for it were all simply false and he could have found this out by making the simple inquiry he should have made. In fact, we will show you that even if they had supplied an in-place appraisal as they claim that was all they were required to do that a proper and scientific and sound in-place valuation would have shown us that this plant was a risky plant, it didn't have or wasn't worth \$1,000,000 and it would have alerted us right then and there that we better stop and not go ahead and enter into

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this loan guarantee.

Finally, two more minutes, your Honor. said we have three causes of action. If you should find for us on any one of our causes of action you will reach the damages. We are asking for compensatory damages to compensate plaintiff for its loss of over \$160,000 with a loan guarantee for Time & Micro and we are asking for an additional \$50,000 in punitive damages because of defendant's gross negligence, because of defendant's fraud in representing to us, its client, someone that was going to rely on its appraisal as expert and professional appraisal values, values which were not only false but which we will show the defendant had simply no reason to believe were true because it had not even made an appraisal.

Thank you, your Honor.

THE COURT: Let me remind the jury, and this applies to both statements, that whatever the lawyers say is not necessarily evidence and that the evidence must flow from witnesses who take the stand and from documents, previous testimony and so forth and the Court will charge you on all the issues with respect to what you are to consider and the issues which you are to determine.

Mr. Stream for the defendant.

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Judge Levet

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MR. STREAM: Thank you, your Honor.

I am almost at a loss to know where to begin, Mr. Foreman, ladies and gentlemen of the jury, because if indeed the story is as told by my good friend for the plaintiff, I would have packed up my bags and gone home because there is nothing left there except for the jury to go outside and say "I award damages" and that's that.

The trouble is, I am reminded -- and this is much like you might say sitting in an opera house with a libretto to riggoletto and they are performing Madam Butterfly. It is a different ballgame and it is a different opera, and a different story all together. Let me tell you, your Honor, and ladies and gentlemen of the jury, that we propose to show in this case that what happened here was a rip-off in the classic sense of the term, no different from Ponzi's attempt to sell the Brooklyn Bridge.

I am going to show you what the plaintiff did here and that was to rip off the defendant, rip off Time & Micro and to rip off the United States government as well. I am going to do that through testimony and not through my words. What I say, of course, is not testimony, but I will prove it. Everything I say, I will prove, and if I don't prove it when this case is summed up, count I will show what I failed to prove. I think you will find I haven't overstated

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anything.

Essentially I am going to give you a broad picture of a canvas. I don't want you to get lost during this trial in the little strokes. You are going to hear nothing but little strokes through verbs and nouns and testimony, but you must keep the big picture in mind. You must understand the dimensions of the issue, the problems you have before you. Those issues, ladies and gentlemen, involve an appraisal made on August 19, 1966. That was a Monday. It was important to know that it was a Monday because the instructions to do the appraisal were given the previous Friday, that is to say August 12th.

On August 12th the defendant was retained to do an appraisal and so imperative and so urgent was that appraisal to Ajax that the following Monday the defendants appraiser, Mr. Thaler, was required to go down to the plant and he spent twenty-two consecutive hours getting a job done which he said should have taken about three weeks. but he was told to do it and do it fast.

You are going to find out why it was so urgent that it be done that quickly. You are going to be required to understand a very important distinction which will be made throughout the entire trial and it will be made by the witnesses, it will be made in the documents introduced in

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evidence. Those distinctions involve the definition of fair market value -- actually I should say the distinction involves appraisals.

You will hear there are different appraisals. The traditional appraisal is a fair market value appraisal of a facility or of a plant or of a machine or of a horse or of whatever you will as an going thing, as an operating unit.

In this case a fair market value appraisal -on-site is the term that will be used or intact means an appraisal -- you will hear, of the fair market value of that plant as a going concern in place, ready to operate, not ready for auction sale whenver an auction is held. That is something all together different and that kind of appraisal is called an appraisal of liquidating values, not a fair market value appraisal. They don't use the word "fair market value," they use "liquidating value" and you will hear their own expert, I believe, testimony, and the documents will disclose it in any case, that there are two kinds of liquidating values reached by an appraisal; one is called liquidating value of a sale made in orderly conditions, that means when you have the time to look for customers for the entire plant or parts of it. It may take as long as a year, their expert will tell you.

jalt 4

Then there is the bottom rung of the ladder, the lowest of the low kind of appraisals, the liquidating value, sale under forced sale conditions, and that is a disaster sale. That is at an auction under an auctioneer's hammer in liquidation of a plant. That is what happened some fourteen months after they got our appraisal.

We will find out why this plant went into an auction under an auctioneer's hammer at forced sale and liquidation. But remember to distinguish between a fair market value appraisal on-site in place and these other liquidating value appraisals because you will find out that the appraisal which was rendered by Industrial Plants to the plaintiff was a fair market value appraisal.

There would be no question about that. The appraisal will describe itself as a fair market value appraisal.

The experts will testify that this was not an appraisal of liquidating values but a fair market value. Aja: will say that is not what we asked for. That may be. We think the proof will demonstrate that they asked for the fair market value appraisal, that they received the fair market value appraisal, that they understood they got a fair market value appraisal and they paid for it. They did not refuse to pay for it, they paid for it.

Then you can hear testimony that later on Mr. Klein, who is sitting in the corner here and used to be one of the officers of Ajax, he wrote you will find out to Industrial Plants and said "Thank you very much, but we also would like to have liquidating values." That is something else.

Remember your first issue, the big canvas is what did Ajax ask for and what did Ajax get, not what happened fifteen months later when they went through a forced sale. What did they ask for, and what did they get.

If they got what they asked for, even if they couldn't use it for the purpose of making an auction sale hence twelve months, if they got what they asked for, even though they couldn't use the appraisal for those purposes, they didn't break the contract.

Industrial Plants cannot be charged with any broken contract if they delivered that which they were told to do and that which Ajax paid for.

So understand, the big question is, what was the agreement; not what should they have done, but what did Ajax ask Industrial Plants to do and did Ajax get that which it asked for.

Now we get to the rip off. Why did they ask any appraisal you ask yourself, and you will find out the

reason they asked for an appraisal despite the fact they had an appraisal two years old which showed the value of the plant in place, intact, and ready to operate would be worth in \$1,200,000 two years ago and despite the fact that you will hear from the people who prepared that appraisal that eighty percent of the machinery and equipment in that plant would not have appreciated in the remaining two years following, that is to say by 1966, and despite the fact that Ajax had that appraisal and gave it to our client's man to use to facilitate the new appraisal, why did they ask for the appraisal?

Why did they need it? They needed it for the reason that has never been disclosed in the plaintiff's complaint and has never been disclosed in the plaintiff's papers thus far.

They needed it because Ajax was on the verge and was in negotiation in August, 1966, with the United States government to enter into a contract as prime contractor and they signed it too, by the way, in October, 1966, about a month or so after the appraisal was done.

By the way, you have to stop and think whether this loan transaction was a loan made in reliance upon the appraisal or because they smelled this government contract which was coming down the pike at that time.

They signed the government contract in October, 1966 requiring a payment of Uncle Sam to Ajax of \$3,000,000. The only condition was that Ajax find a sub-contractor that could make the timing mechanisms for the fuses which was the subject of the prime contract and where could Ajax get these time mechanisms made? Time & Micro.

A \$3,000,000 contract in negotiation at the time of the negotiation. Time & Micro sitting there like fat pigeons with the finest machinery known to man for the manufacturing of time mechanisms.

You will hear Ajax went and visited mime & Micro and they said, "How would you like to become joint venturers! we want to be 50-50 with you people in your company."

I will show you before the appraisal work was done there was memorandum exchanged between the two companies making them in a sense joint venturers, 50-50 partners in everything that Time & Micro might do from that toint on and also in this government \$3,000,000 contract.

But they had a problem, Time & Micro had a debt of \$250,000 and that is no problem because in 120 days the money will be coming in from Uncle Sam, let's get a short term loan, clean up the debt so Uncle Sam knows that your sub-contractor, Mr. Time & Micro, can do the job and we will all be making much money.

You will find out there was a ten percent profit in that contract, \$300,000 in profit at least built into that contract. So they went to a bank and they got a bank to agree to lend \$270,000 to Time & Micro to clean it up and you are going to find out that Ajax didn't make a loan to this Time & Micro.

Ajax simply said "We will guarantee you." It was a safe guarantee because they were getting the money from Uncle Sam anyhow. A bank in California made the loan, you will find out, to Time & Micro, and the bank took back a chattel mortgage which is to say the right to use or to sell the machinery and equipment if the bank wasn't paid.

That, ladies and gentlemen of the jury, is why Ajax needed an appraisal. They didn't need the appraisal themselves. The bank needed the appraisal. The bank received the appraisal. They even gave them extra copies of the appraisal.

Ajax didn't rely on the appraisal. The bank did and the bank got a chattel mortgage on the property.

Then to the surprise of everyone, you will find out almost less than ninety days after this whole beautiful bubble was put together, the government terminated the contract. Maybe we will find out why the government terminated the prime contract that it had lettered to Ajax

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CHITTEEN C. CRICT COURT REPORTERS HE COURTHOUS

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less than ninety days earlier.

October 19th. On December 30th the government terminated the contract. We don't know why but we are going to find out why. We will find out that all this hue and cry about losses is a whole other thing. You will find in the evidence before you that Uncle Dame on the claims of this plaintiff, paid to this plaintiff \$249,917 as damages because the government liquidated or the government prematurely terminated the contract, \$249,000 in damages, less than ninety days after they were engaged in the first place.

You have to find out what they did with that money. How much did they keep? Did they really have any loss, even if they were one hundred percent right with all their causes of action, were they really out of pocket or did they rip off Uncle Sam the way they did Ajax?

You are going to have to ask yourselves why did did they not protect Time & Micro? Why did they let that company go down the drain at a public auction? Those are questions we will get to at summation it the conclusion.

Be mindful of them, they are important. I mentioned this government contract because as the Court will charge you at the end of the case reliance is a very important factor. It is the second big issue, as I see it.

mdlt 15

Keep an open mind. Remember that during the course of this trial you are going to hear a lot of evidence and you're going to study a lot of documents and you're going to find them perplexing. But it will be my function at the conclusion of this trial to sum up and to correlate and to explain to you. Remember, ladies and gentlemen, and I say this not captiously, I am not on trial, Mr. Brill is not on trial, his clothing, my clothing, his voice, my head are not on trial.

Objections are not evidence. Just listen to the witnesses. We get excited and the Court will monish us, I promise you. You are privileged to be presided over by one of the eminent jurists in this district. He will keep order in this courtroom, I promise you that.

Perhaps I will leave you with an expression.

I said this is a rip off and I mean it. I say this approaches criminal fraud, and I mean it. I call the entire approaches proceeding operation haste and I will prove it to you.

THE COURT: According to my watch it is a little after 12, suppose we recess now and then come back a little after 1, rather than otherwise. So, come back at 1:15, members of the jury. We will proceed at that time.

(Jury left the courtroom.)

MR. BRILL: May I approach the bench with Mr.

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SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE

2 Stream? THE COURT: I don't know what you have to do 3 now, counselor. The Court is adjourned. There is nothing 5 before the Court now to be mentioned. 6 As to something about the trial, Counselor? 7 MR. BRILL: I don't want to talk about the 8 weather, no. I would like to talk about the trial. 9 MR. STREAM: That was almost contempt, that kind 10 of remark, your Honor. THE COURT: I don't see that --11 12 MR. BRILL: I apologize. 13 THE COURT: What do you want to talk about? 14 MR. BRILL: I simply want to make a statement. 15 THE COURT: This is not the time to make 16 statements. 17 MR. BRILL: Can I make my statement when we 18 return from lunch before the jury is called into the court-19 room? 20 THE COURT: You try your case and then you sum 21 up. You don't make statements and I am not listening to ever 22 bit you want to talk about. The court is adjourned. 23 MR. BRILL: I objected to certain statements in 24 Mr. Stream's opening statements and I intended to have the 25 Court address to the jury that they not pay attention to

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jqlt 17 certain statements that he made.

THE COURT: I will not do so, Counselor.

(Luncheon recess.)

10/14 p.m.		
Ajax v		
Industrial		
1 p.m.	1	jqlt 1
e. Lmony of Lein	2	(In open court - jury present.)
	3	THE COURT: You may call your first witness,
2	4	Mr. Brill.
	5	MR. BRILL: The plaintiff calls as its first
	6	witness Mr. Howard M. Klein.
	7	HOWARD M. KLEIN, called as a witness
	8	on behalf of the plaintiff, being first duly sworn,
	9	testified as follows:
	10	DIRECT EXAMINATION
	11	BY MR. BRILL:
	12	Q What is your present address?
0	13	THE COURT: His residence address?
	14	MR. BRILL: Yes.
	15	A 853 Villa Semante, Palise Verdes Estates,
	16	California.
	17	Ω What is your present occupation?
	18	A I am president of Standard Incorporated, a
	19	publicly owned company whose principal business is the manu-
	20	facture of machinery for seamless can making.
	21	THE COURT: For whom?
	22	THE WITNESS: Seamless can making, can making
J.	23	machinery.
	24	O This is aluminum cans or metal cans for
	25	beverage containers

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SOUTHERN COURT COURT REPORTERS. U.S. COURTHOUSE FOLE: SQUARE, NEW YORK, N.Y. - 791-1020

Klein-direct

Were you employed at some time in the past by

This is correct.

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1 gjlt 3 Klein-direct THE COURT: What kind of hardware? 3 THE WITNESS: Cabinet hardware. THE COURT: What is cabinet hardware? 5 THE WITNESS: It is hinges and latches and 6 knobs that are used in the kitchen and bathroom. 7 THE COURT: Go ahead. 8 Q You say that you were responsible for the development of new lines of business. 10 Did Ajax begin seeking any such new lines of 11 business in 1966? 12 A Yes. We began competing for military contracts 13 for ordinance ammunition devides such as fuses and other 14 small devices of that nature. 15 THE COURT: Such as what, sir? 16 THE WITNESS: Fuses, timing fuses. 17 Q Mr. Klein, in connection with your duties for 18 Ajax, did there come a time when you met with a Mr. Jesse Thaler of the Industrial Plants Corp., the defendant in this 19 20 case? . 21 A Yes. 22 Q Can you tell us when and where this meeting 23 took place, to the best of your recollection? 24 A I met Mr. Thaler in the New York office of 25 Time & Micro. To the best of my recollection it was

1	jqlt 4 Klein-direct
2	August 12, 1966.
3	THE COURT: August 12, 1966.
4	Ω Do you remember what day of the week that was,
5	Mr. Klein?
6	THE COURT: Is that vital?
7	MR. BRILL: I think it is relevant, your Honor.
8	THE COURT: Do they do different things on
9	Friday there? What difference does it make?
10	Go on.
11	Q Do you remember what time the meeting was held,
12	Mr. Klein, approximately?
13	A It was in the afternoon, some time approximately
14	between 2 o'clock and 3:30.
15	Q Did you have a conversation with Mr. Thaler
16	at this meeting?
17	A Yes.
18	Q Can you tell us whatyou said to Mr. Thaler
19	in this conversation?
20	A Yes, I reviewed
21	THE COURT: You what?
22	1 HE WITNESS: I informed him
23	
24	THE COURT: What did you say?
25	THE WITNESS: Pardon me?
	THE COURT: What did you say? Informed is a

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rather vague word.

Klein-direct

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A I told Mr. Thaler that Ajax was interested in retaining its services to perform an appraisal at the Time & Micro plant. I told him the purpose that Ajax wanted the appraisal for was that they were contemplating either advancing money or guaranteeing a loan for Time & Micro and that we wanted to know the forced liquidation value of equipment in case there was a default on the loan and the equipment had to be sold.

I also told him that I wanted to get the replacement value appraisal at the same time that he was doing the survey.

Did you tell him anything about the relationship between Ajax and Time & Micro?

A Yes, I told him that if Ajax received a government contract for fuse manufacture that we were contemplating either a joint venture or using Time & Micro as a vendor to supply the timing devices for the particular fuse.

Did you tell him --

THE COURT: You don't lead, Counselor.

I see an objection right away coming up.

What if anything did you tell --

MR. STREAM: No, if your Honor please.

1	jalt 6 Klein-direct
2	else, if anything, do you remember was said? No suggestions
3	of subject matter are proper.
. 4	MR. BRILL: I think I am allowed to direct Mr.
5	Klein's attention to areas
6	THE COURT: Not that way. This is too critical
7	an area, Counselor. Do not lead in any respect.
. 8	Q What did Mr. Thaler say to you after you had
9	told him
10	THE COURT: Don't bring "after you had told him"
11	in your question.
12	Q What did Mr. Thaler say to you?
13	THE COURT: Can you answer that?
14	THE WITNESS: Yes, your Honor.
15	THE COURT: Please do.
16	A When I told Mr. Thaler that Ajax did not have
17	any knowledge of the type of machinery that was in this plant
18	I asked him whether he had had the background and experience
19	in machinery of this type, instrument manufacturing machinery
20	and he assured me that he had.
21	THE COURT: Strike out "assured."
22	Just tell what he said. Don't color it at all.
23	A He told me that he had
24	THE COURT: Had what?
25	THE WITNESS: That he had had experience, that

Klein-direct

he had performed appraisals in several plants that had equipment similar to the equipment in Time & Micro.

In fact, he mentioned Fairchild Instrument Company as one of the firms that he had performed an appraisal for.

Then we had a further discussion as to the time that he would make the inspection. I requested him to make it on Monday. I told him that because the plant was in a remote area, in order to find, that I would arrange for an Ajax employee to drive him to the plant ans as some of the equipment was stored in a warehouse that we wanted an appraisa on, I told him that this Ajax employee knew where the equipment was and would be helpful in locating it for him.

Thaler told me that he had a conflict, that he had arrange an appointment to do an appraisal early in the week and he would see what he could do to reschedule his time and I believe he called me on the telephone the next day and advised that he had rescheduled his time and that he would be down at the Time & Micro plant on Monday for the appraisal.

Q Mr. Klein, was anything said at this meeting concerning the type of appraisal value which Mr. Thaler was to provide?

MR. STREAM: I object to that, your Honor,

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	1	jqlt 8 Klein-direct
0	2	leading.
	3	THE COURT: Sustained.
2	4	MR. BRILL: It does not lead him
	5	THE COURT: That is leading and I sustain the
	6	objection.
	7	MR. STREAM: May I ask the Court to direct
•	, 8	THE COUPT: And disregard these comments.
	9	MR. STREAM: I think I would accept the
	10	direction and I would expect that counsel would also accept
	11	the direction that neither of us should comment after the
	12	Court makes a ruling.
0	13	THE COURT: Yes, that is directed. Do not
	14	comment after rulings. If there is anything important I
	15	shall listen to a discussion of it in a recess or when the
	16	jury is not in attendance.
	17	Ω Can you tell us if you recall anything else
	18	that you said to Mr. Thaler during this conversation?
	19	THE COURT: Which day is this?
	20	MR. BRILL: The conversation
)	21	THE COURT: Which day is it?
	22	MR. BRILL: August 12, 1966, your Honor.
	23	I withdraw the question, your Honor.
0	24	THE COURT: All right, the question is withdrawn.
xxxx	25	(Plaintiff's Exhibit 1 was marked for
		identificatio)
		A-1087 SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

(Plaintiff's Exhibit 1A was marked for

O I show you Plaintiff's Exhibits 1 and 1A for identification and ask you if you can identify these docu-

THE COURT: Take one at a time, first 1.

THE WITNESS: Yes, I can identify i

THE WITNESS: This is a copy of an appraisal performed by the Hirschmann Corporation for Time & Micro

What is Exhibit 1A for identification?

This is the letter of transmittal with the itemized appraisal inventory explaining some of the terms and the basis that the appraisal was made on.

THE WITNESS: By the Hirschmann Corporation.

- Is there a date on the covering letter?
- How, if at all, did these documents, Plaintiff's Exhibits 1 and 1A, figure into your meeting

MR. STREAM: Objection.

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SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE

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1 jqlt 11 Klein-direct Honor. 3 5 think you have them in your possession. 7 8 9 this bench. 1 11 12 Exhibit 2 for identification, please. 13 14 identification.) 15 16 17 18 19 appraisal that I gave to Mr. Thaler. 20 21 this is the copy which was given to Mr. Thaler. THE COURT: Offer this one then. 25 this document?

MR. STREAM: May I ask counsel where the originals that were given the witness as to Mr. Thaler? I MR. BRILL: May we approach the bench so we can discuss this out of the presence of the jury? THE COURT: Yes. There is not much privacy in (Bench conference not reported.) MR. BRILL: Would you mark this Plaintiff's (Plaintiff's Exhibit 2 was marked for Q Mr. Klein, I ask you to look through Plaintiff's Exhibit 2 for identification and tell us whether you can identify this document or portions of that document? A This looks like it might be the copy of the MR. BRILL: Perhaps counsel can stipulate that MR. BRILL: He didn't identify it, your Honor. So you recognize the red writing which is on

1	jqlt 12 Klein-direct
	A No, I don't.
2	Q Do you recognize the tapes that are taped in?
3	A No, I don't.
4	Q Do you recognize the format in which it is now
5	with a blue cover and all bound together in that format?
6	A No.
7	
8	Q Do you recognize the writing on any of these
9	sheets in the back, certain red markings on these documents,
10	pen marking?
11	A No.
12	THE COURT: Was that something which was
13	received by Ajax, sir?
14	MR. BRILL: No, your Honor.
15	THE COURT: I didn't ask you. I am asking him.
16	If you are going to testify, you will have to take an oath.
17	I am asking you, sir, do you recognize that as something
	that came into the hands of Ajax? Do you or do you not?
18	THE WITNESS: I do not recognize this particular
19	document.
20	THE COURT: I am trying to shorten this thing
21	bu I guess I am a failure at that.
22	MR. BRILL: I offer 1 and 1A as a copy
23	THE COURT: Don't tell me what you offered.
24	
25	Tell me what you are offering.

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MR. STREAM: May I have a voir dire and I will solve the problem?

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. STREAM:

- Q Mr. Klein, the document before you which is marked Plaintiff's Exhibit 2 for identification, am I correct in understanding that your best recollection is that that document without the red numbers and the red markings is probably the document which you gave Mr. Thaler on August 12, is that a correct statement?
 - A I can't be sure, sir.
 - Is that your best recollection?
- A This is a copy -- I did not have the original and I can't tell one copy from another copy.
- 0 What, sir, is your best recollection of that matter? Is it that you gave Plaintiff's Exhibit 2 to Mr. Thaler or something else? That's all we want to know.
- A I gave Mr. Thaler a copy of the Hirschmann appraisal. But I cannot tell if this is the sheet or not. It is in a different form and package than I had it.

MR. BRILL: I offer 1 and 1A, your Honor.

MR. STREAM: There is no foundation for that.

I will withdraw my objection. Put them in.

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	1	jqlt 14 Klein-direct
0	2	MR. BRILL: This is
•	3	THE COURT: To both of these?
0	4	MR. STREAM: I have withdrawn my objection.
•	5	THE COURT: You may have I and IA marked in
	6	evidence.
	7	(Plaintiff's Exhibits 1 and 1A were received
• xxx	8	in evidence.)
	9	DIRECT EXAMINATION CONTINUED
	10	BY MR. BRILL:
	11	Q Mr. Klein, did you say anything to Mr. Thaler
	12	at the time that you gave him the Hirschmann report,
•	13	Plaintiff's Exhibits 1 and 1A?
	14	THE COURT: Is this a question?
	15	MR. BRILL: Yes, it is, your Honor.
	16	THE COURT: Please speak up or let the
	17	reporter read it. Keep in mind that questions are supposed
•	18	to be heard by all in this little courtroom.
	19	Q Did you say anything to Mr. Thaler at the time
	20	that you gave him the Hirschmann report, Plaintiff's Exhibits
•	21	1 and 1A?
	22	THE COURT: Yes or no.
\supset	23	A Yes, I did.
0	24	Ω What did you say to him?
0	25	A I told him to use the Hirschmann report for an

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Klein-direct

inventory of the machinery and equipment in the Time & Micro plant. I told him it was the only inventory list I had. I told him not to use the valuation on the Hirschmann report, that I wanted Thaler's independent opinion of the values in his appraisal.

Mr. Klein, what arrangements were made, if any, during your meeting with Mr. Thaler for him to survey the machinery in the Time &Micro plant?

THE COURT: I don't know how you can ask it that way. That would have to be between two persons, wouldn't it? It calls for conversations, doesn't it?

Did you have a conversation with Mr. Thaler concerning the arrangements for him to survey the Time & Micro plant?

- Yes.
- What was that conversation?
- I told him that Harry Haakensor --

THE COURT: You told him what, sir?

THE WITNESS: I told him, Mr. Thaler, that I had arranged for Harry Haakensor, an employee of Ajax, to drive him to Strasburg, Pennslyvania, the location of the Time &Micro plant.

I also told him that Haakensor was familiar with all of the equipment in the plant and the additional

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jqlt 16 Klein-direct

equipment in a warehouse in Strasburg, that we wanted appraised and that it would be helpful for him to have Haakensor show him where these items of equipment were located and stored.

I also told him that I wanted to hear from him as soon as he had made the inspection so that he could indicate a value, a preliminary value, as we were in the mildle of negotiations with Time & Micro regarding a loan guarantee.

THE COURT: Did you tell him when you wanted it?

THE WITNESS: Yes, your Honor. I asked him to call me when he completed the inspection at the Time & Micro facility.

Q Did you have a conversation with Mr. Thaler at this meeting concerning Industrial's fee for this appraisal?

A Yes, I did.

Q What was that conversation?

A I asked him what the fee would be for the appraisal. To the best of my recollection, he told me it would be one percent of the first \$500,000 of appraised valuation and a sliding scale, I think a half of one percent on any value in excess of \$500,000.

We discussed the fee further and did some

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jqlt 17 Klein-direct negotiating and Mr. Thaler agreed to a somewhat lesser fee.

THE COURT: Strike out "agreed." You simply state what was said. This is technical, but this is a technical case, points at least.

THE WITNESS: Yes, your Honor.

Mr. Thaler said he would accept an alternate proposed fee.

. Q Did Mr. Thaler say whether or not --MR. STREAM: Objection. It starts off as a leading question and I object.

THE COURT: Sustained.

Q What else was said by Mr. Thaler at the meeting that you can recall, Mr. Klein?

A During our discussion over the amount of the fee I had commented that I thought the amount was excessive for one day's work and he told me that I was paying for one day of his time and forty-two years of experience.

Q Is that substantially all that you remember from the August 12ch meeting?

A Substantially all I recall, yes.

Did you have any conversation with Mr. Thaler after this first meeting on August 12th?

Yes.

1	jqlt 18 Klein-direct
2	Ω When was that conversation?
3	THE COURT: The first one afterwards?
4	Q Yes, when was your first conversation after the
5	
6	A The best I can recall, I think he called me on
7	Saturday, which would have been August 13th and told me that
8	he would make the inspection on Monday. He was able to
9	reschedule his other planned assignment.
10	Q Did you have a conversation with him after
11	that?
12	A Yes.
13	Q When was the next conversation with Mr. Thaler?
14	A He called me
15	THE COURT: "When," he said. When?
16	THE WITNESS: On August 15th.
17	Q Did he call you or did you call him?
18	A He called me.
19	Q What was the substance of this conversation with
20	Mr. Thaler on August 15th?
21	A He told me that the inspection of the machinery
22	and equipment at Time & Micro had taken longer than he
23	anticipated and that he would not be able to give me values
24	that night, that he would call me the next day after he
25	returned to his office in New York and give me an indication

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jalt 19 Klein-direct of the value of the plant.

Q What was said? Did he call you the next day? Did you have a conversation with him the next day?

A To the best of my recollection he called me the next day.

Q Do you recall what was said during that conversation? That would be August 16th.

A He told me that the high side appraisal on the equipment and machinery in the plant was \$900,000 and that the forced liquidation value of the machinery and equipment would be approximately \$500,000.

Q Do you recall whether anything else was said during this conversation?

A !!e said that it was the finest collection of precision machinery that he had seen under one roof in his years of experience. He also indicated --

THE COURT: No, said.

He also said that it was in short demand.

MR. STREAM: May I request that the witness give the conversation in words and substance and not the short of it, the long of it.

MR. BRILL: He said that the machinery was in short demand, not that he was giving a short version of the conversation.

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	1	jqlt 22 Klein-direct
O	2	THE COURT: All right. I withdraw my question.
٥	3	Q When was it received, Mr. Klein?
)	4	A It was received on the 18th of lugust.
•	5	MR. BRILL: I offer it into evidence, your
	6	Honor.
	7	THE COURT: What is the number on that?
•	8	MR. BRILL: Plaintiff's Exhibit 3, your Honor.
	9	MR. STREAM: No objection.
	10	MR. BRILL: I would like to read the telegram
	11	to the jury.
	12	THE COURT: Have the clerk mark it first,
•0	13	please, or these will turn up without any admission number
	14	on them.
	15	(Plaintiff's Exhibit 3 was received in
• xxxx	16	evidence.)
	17	(Mr. Brill read to the jury from Plaintiff's
	18	Exhibit 3 in evidence.)
	19	Q Mr. Klein, what if anything did Ajax do thet
	20	receiving the information given in Industrial's telegram?
•	21	A Ajax accepted the dollar valuation as sufficient
3	22	to cover
2	23	MR. STREAM: No.
0	24	Q What did Ajax do?
	25	A We proceeded

Klein-direct 1 jalt 23 2 THE COURT: Strike out the other answer then. A Ajax proceeded to sign a loan agreement with 3 Time & Micro Comapny to guarantee a \$270,000 loan with a bank. 6 (Plaintiff's Exhibit 4 was marked for 7 identification.) 8 Q Can you identify Plaintiff's Exhibit 4 for 9 identification, Mr. Klein? 10 A This is the loan and security agreement that Ajax signed on August 18th with Time & Micro. 11 12 MR. BRILL: I offer Plaintiff's Exhibit 4 13 into evidence. 14 MR. STREAM: No objection. 15 (Plaintiff's Exhibit 4 was received in 16 evidence.) 17 Q Mr. Klein, was there a relationship between 18 the telegrams which you have identified as Plaintiff's 19 Exhibit 3 and this document, Plaintiff's Exhibit 4, the 20 loan and security agreement? 21 THE COURT: Mr. Stream, you are not listening. 22 MR. STREAM: I heard him, your Monor. I 23 apologize. (Question read.) 25 THE COURT: I don't know what that means.

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The relationship between two documents --

A The telegram, after receipt of the telegram and the completion of the appraisal with the dollar amount valuation of the machinery and equipment, Alax signed the loan agreement with Time & Micro based on the information.

The telegram was the reason for going ahead with the loan agreement.

O Mr. Klein, was any other appraisal or report other than the appraisal supplied by the defendant a factor in Ajax's decision to enter into this loan security agreement?

MR. STREAM: That calls for a conclusion of mind and I object to it, your Honor.

THE COURT: Sustained.

Mr. Klein, what other appraisals or reports were reviewed and considered by Ajax in connection with entering into this loan and security agreement?

A None.

Q Was there any relationship between the Hirschmann report and this loan and security agreement?

MR. STREAM: It is a leading question. The answer is in the record.

THE COURT: Sustained in that form.

MR. BRILL: I would like to have marked Plaintiff's Emhibits 5 and 6.

1 Klein-direct jqlt 25 2 (Plaintiff's Exhibits 5 and 6 were marked 3 for identification.) Q Mr. Klein, I show you Plaintiff's Exhibits 5 5 and 6 for identification, and ask you if you can identify 6 those documents. 7 THE COURT: One at a time. One at a time, please. 9 THE COURT: What is 5? 10 THE WITNESS: 5 is the letter of transmittal 11 that the Itemized appraisal list from --12 THE COURT: Which exhibit is it? 13 THE WITNESS: 5, which is the letter of 14 transmittal. 15 THE COURT: Which exhibit is the one trans= 16 mitted with that? 17 THE WITNESS: Exhibit 6 was transmitted with 18 Exhibit 5. 19 MR. BRILL: I offer Plaintiff's Exhibits 5 and 20 6 in evidence, your Honor. 21 THE COURT: Leave them down with him so he 22 can examine them. 23 MR. STREAM: Consented to. THE COURT: No objection, mark them. 25 (Plaintiff's Exhibits 5 and 6 were received in evidence.) A-1104

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

1 jqlt 26 Klein-direct MR. BRILL: I would like to read the letter, 3 your Honor. THE COURT: All right. 5 (Mr. Brill read to the jury from Plaintiff's 6 Exhibit 5 in evidence.) 7 O Mr. Kleir, did Ajax have any further communica-8 tions with Industrial Plants Corporation subsequent to the 9 receipt of Industrial's appraisal? 10 THE COURT: This is communications from or to 11 or what? 12 From Ajax to Industrial Plants. 13 Yes. 14 MR. BRILL: I ask that this document be marked as Plaintiff's Exhibit 7 for identification. 16 (Plaintiff's Exhibit 7 wasmarked for 17 identification.) 18 Q Can you identify Plaintiff's Exhibit 7 for 19 identification, Mr. Klein? 20 Yes. 21 What is it? 22 A This is a letter written by Norman Louis, the 23 president of Ajax, to Mr. Jesse Thaler of Industrial Plants 24 Corporation. 25 What is the date on the letter, Mr. Klein?

1 Klein-direct jqlt 27 2 The letter is dated August 23rd. A 3 1966? 1966. 5 MR. BRILL: I offer Plaintiff's Exhibit 7. 6 MR. STREAM: I object to the introduction in 7 evidence of a copy of an exhibit --8 THE COURT: Where is the original? 9 MR. STREAM: When counsel takes out the original 10 from his briefcase I expect it to be offered. 11 MR. BRILL: There are underwritings in the 12 original --13 MR. STREAM: Which were referred to in the 14 examination before trial. 15 MR. BRILL: They were not referred to in the 16 examination of Mr. Klein. If Mr. Stream wants to offer 17 any document during any other examination --18 THE COURT: Let's see the original. 19 MR. STREAM: The best evidence is the original. 20 You can't escape that. 21 MR. BRILL: That is not true, your Honor. 22 MR. STREAM: I withdraw my objection. 23 (Plaintiff's Exhibit 7 was received in 24 evidence.) 25 MR. BRILL: I would request that you direct

A-1106

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

1	jqlt 29	Klein-direct
2		THE COURT: Did you call?
3	ū	Did you speak to anyone in a telephone conversa
4	tion at Indu	strial Plants Corporation?
5	A	Yes.
6	Ü	Who did you speak to?
7		THE COURT: When did you have this telephone
8	call?	
9	Q	When did this telepohne conversation take place
10	A	Some time within I can't remember the exact
11	dates, but s	hortly after the letter that was just entered
12	into the exh	ibit was mailed.
13	Ω	Who was this telephone conversation with?
14		THE COURT: If you know.
15	Q	Who did you speak to at Industrial Plants
1.6	Corporation?	
17		THE COURT: Do you know with whom you spoke?
18		THE WITNESS: Yes, I talked to a Mr. Thaler
19	and also a Mi	r. Kriser.
20		THE COURT: What is the second name?
21		THE WITNESS: Mr. Kriser.
22	Ω	What did you say to Mr. Thaler in this
23	conversation	?
24		MR. STREAM: Excuse me, please. May I have a
25	voir dire on	that before we go into that conversation?

1	jqlt 30 Klein-direct
2	THE COURT: Yes.
3	VOIR DIRE EXAMINATION
4	BY MR. STREAM:
5	Q Mr. Klein, you are about to relate a conversa-
6	tion that you had over the telephone? Did you hear me?
.7	A No, I didn't, sir.
8	(Question read.)
9	THE COURT: Is that correct?
10	THE WITNESS: Yes, sir.
11	Q You are talking from California to some people
. 12	in New York City, is that your testimony?
13	A Yes, I was talking on the telephone from
14	California to New York City.
15	Q And you say you spoke to whom?
16	A A Mr. Thaler and a Mr. Kriser.
17	Q Had you ever spoken to Mr. Kriser before in
18	your life?
19	A No, I had not.
20	Ω How do you know you were talking to Mr. Kriser?
21	A Mr. Thaler introduced him to me on the tele-
22	phone.
23	Q How do you know you were talking to Mr. Thaler?
24	You didn't really, did you?
25	A I didn't see him.

1	mdlt 31 Klein-direct
. 2	Q You don't know it was he, did you?
3	
4	Q You didn't know, did you?
5	MR. BRILL: Your Honor, this is improper voir
6	dire.
7	THE COURT: No, it is not improper.
8	MR. BRILL: If he wants to establish the
9	authenticity of the conversation
10	THE COURT: You have not established wait a
11	minute. If you can stop interrupting me at least if you
12	propose to elicit telephone calls there must be an identifi-
13	cation and something that is known, not something guessed
14	at
15	MR. BRILL: I will offer I have not been
16	given the opportunity to establish the authenticity of the
17	phone conversation. I am entitled to that.
18	THE COURT: You may object if it is not proper.
19	That is a better way to proceed.
20	MR. STREAM: Are you telling me to stop asking
21	questions?
22	THE COURT: At the present time. You may object
23	to questions. Unless a proper foundation is laid there will
24	be no answers as to what this conversation was or with whom
25	it was.

1 jqlt 32 Klein-direct BY MR. BRILL: 3 Do you remember whether you made the phone call or whether somebody else called you? 5 No, I don't remember. 6 Did you recognize the voice on the other end 7 of the phone? 8 I assumed --9 THE COURT: Had you ever heard that voice 10 before, and when? 11 THE WITNESS: I had heard the voice before. 12 MR. STREAM: Which one, your Honor? 13 THE WITNESS: Mr. Thaler's. 14 THE COURT: When had you heard it before? 15 THE WITNESS: In several prior conversations. 16 THE COURT: Where, on the telephone? 17 THE WITNESS: A telephone conversation. 18 Did the person on the other end of the phone 19 conversation identify himself to you? 20 Yes. THE COURT: That is a pretty flimsy basis, Counselor. What did he identify himself as? Who did he identify himself as? 25 A . Jesse Thaler.

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qIt	33	Klein-direct
		VIETU-GILECT

O Did you recognize the voice as being the same voice as you had talked with previously when you talked to Mr. Thaler previously?

A Yes, I did.

Did Mr. Thaler say anything to you in connection with placing somebody else on the phone on his end of the phone? Did he say he was going to have you talk to somebody else?

THE COURT: You're leading him.

A He introduced Mr. Kriser to me.

Q What did he say?

A He said he wanted me -- was going to put Mr.

Kriser on the phone who was secret :y of Industrial Plants.

This conversation was in relationship to a buy back --

THE COURT: Nobody asked you that yet, please.

MR. BRILL: I urge that sufficient authentification has been made under Rule 9016 of the Federal Rules which states that in the event of voice identification --

THE COURT: Let's see your federal rules.

I don't have mine here. They didn't go into effect until

the first of July.

I haven't heard of any directed identification.

Did you ever talk to this same voice before?

THE WITMESS: Yes, sir.

that.

1 mdlt 36 Klein-direct 2 3 that we got into --4 5 question. 6 7 during this conversation? 8 9 10 11 . 12 13 14 agreement? 15 16 17 18 THE COURT: If what? 19 20 at an agreed price. 21 22 23 24

25

THE WITNESS: But it was during this conversation

THE COURT: Don't answer unless there is a

Q Do you remember anything further that was said

THE COURT: Yes or no.

THE WITNESS: Yes. I told him that Ajax would like to have a buy back agreement if Industrial Plants would be willing on the basis of his appraisal and he told me that he would have to confer with Mr. Kriser.

Q Did you tell him what you meant by a buy back

It would be a commitment from Industrial Plants Corp. to buy the specific items of equipment in Time Micro if it was requested of them.

THE WITNESS: If Ajax requested it. That is

What did Mr. Thaler say to you at that point?

He would confer with Mr. Kriser and he would get back to me. He would respond afterwards.

THE COURT: What are you doing there? This is a courtroom, not a conference room. If you have something

1 jqlt 37 Klein-direct you want to offer, offer it. 3 MR. BRILL: I am asking Mr. Stream to provide 4 5 MR. STREAM: I hand counsel the original of a 6 letter requested. MR. BRILL: Your HOnor, I am asking Mr. Stream 8 for a copy of the previous exhibit in this action. I am not 9 asking for the document he gave me. 10 Never mind, your Honor. 11 (Plaintiff's Exhibit 8 was marked for 12 identification.) 13 Q Can you identify Plaintiff's Exhibit 8, M.r 14 Klein? 15 A Yes. 16 What is this document? 17 It is a letter dated August 29, 1966, which I mailed to Jesse Thaler and it had an attachment which is a rough draft of a buy back agreement. 19 20 MR. BRILL: I offer PLaintiff's Exhibit 8 in evidence. MR. STREAM: I object to it. It is not the 23 best evidence. The original is the best evidence. 24 MR. BRILL: Your Honor, this is the same problem 25 we had the last time.

xxx

1	jqlt 33 Klein-direct
2	THE COURT: I don't know anything about these
3	copies.
4	8 is supposed to be a copy, but I don't know if
5	it's a copy.
6	Sustained.
7	What is it a copy of?
8	THE WITNESS: It is a copy of a letter that I
9	mailed to Jesse Thaler on August 29, 1966.
10	THE COURT: Did you ever compare it with the
11	original?
12	THE WITNESS: No, I did not compare it with the
13	original.
14	THE COURT: Sustained then.
15	MR. BRILL: Your Honor, I suggest
16	MR. STREAM: I ask your Honor to move the case
17	along. Let's use originals. It is for that
18	THE COURT: You could avoid it by getting
19	originals,
20	mR. BRILL: I thought we had worked this out
21	before the case and we worked it out in the last trial.
22	There are markings on here which are hearsay.
23	I suggest we take a few minutes, your Honor.
24	THE COURT: This all should have been done
25	before hand.

1 jqlt 39 Klein-direct MR. BRILL: I attempted to do it before, your Honor. He has identified this as a copy of a letter which he 3 sent. I don't choose to offer it --THE COURT: I will take it subject to connec-6 tion than and get through this. 7 (Plaintiff's Exhibit 8 was received in 8 evidence.) 9 THE COURT: You know the rule and I think you 10 ought to comply with the rule instead of asking for a 11 concession. (Mr. Brill read to the jury from Plaintiff's 13 Exhibit 3 in evidence.) 14 THE COURT: Did you ever get any buy back 15 agreement, Mr. Klein? 16 THE WITNESS: We had an offer for a buy back 17 agreement, yes, from Industrial Plants. 18 THE COURT: Eut it was never accepted by 19 the plaintiff here, Ajax. 20 THE WITNESS: That is correct, your Honor. 21 THE COURT: All right. 22 What he says was that there was an offer by 23 the defendant and it was not accepted by Ajax. So be it. 24 Q Mr. Klein, did you subsequently talk to anyone 25 at Industrial Plants Corp. concerning this proposed

1 jqlt 40 Klein-direct 2 commitment agreement? 3 THE COURT: I hear no objection. MR. STREAM: I will let it go, your Honor. 5 A Yes. 6 When did this conversation take place? 7 THE COURT: And with whom. 0 And with whom. 9 It took place two or three days after their 10 letter --11 THE COURT: Why is this relevant, Counselor? 12 MR. BRILL: We are attempting to establish 13 assurances as to the value of the machinery which were made 14 by officers of the defendant in telephone conversations with 15 Mr. Klein. 16 THE COURT: It is a buy back agreement, that 17 is all it is. 18 MR. BRILL: It was discussed in connection with 19 the appraisal --20 THE COURT: You offered the proposed forms. 21 MR. BRILL: I am asking whether this was 22 discussed subsequently. 23 THE COURT: What difference does it make? What 24 are you trying to show by this? 25 MR. BRILL: I am attempting to show that

A-1119

1	mdlt 41 Klein-direct
2	officers of the defendant gave assurances to Mr. Klein
3	again of the forced sale value of this machinery and that
4	this was not only in connection with the proposed commitment
5	agreement, but also in further explanation of their appraisa!
6	report.
7	THE COURT: All right. It is in.
8	Can you relate to the best of your recollection
9	what the substance of this conversation was?
10	MR. STREAM: Can we have a date?
11	THE COURT: What is the date, counsel? A
12	conversation with who on what date?
13	THE WITNESS: To the best of my recollection,
14	it was anywhere from one to five days after the letter just
15	handed
16	MR. BRILL: I think I can expedite
17	THE COURT: Let him answer. You interrupt
18	your own witness which is a surprising thing for anybody to
19	do.
20	MR. STREAM: May I have the answer repeated,
21	please?
22	THE COURT: Yes, repeat your answer.
23	THE WITNESS: Yes, I had a conversation.
4	THE COURT: With whom?
5	THE WITNESS: With Mr. Thaler and Mr. Kriser
- 11	

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jqlt 42

Klein-direct

of Industrial Plants Corporation some time within a week of the date of that letter.

THE COURT: Was that a person to person conversation? You said with both of these gentlemen?

THE COURT: Where was it?

THE WITNESS: I was --

THE WITNESS: Yes.

THE COURT: Where was it?

THE WITNESS: I was in California talking on the telephone and each of these gentlemen were in New York talking on the telephone.

MR. STREAM: I will help --

MR. BRILL: Excuse me --

MR. STREAM: Just a second. I will help to progress the case, your Honor, by allowing the witness to testify to his conversation, at least the one he said he had on the phone with Mr. Thaler but nobody else.

MR. BRILL: I propose to authenticate --

MR. STREAM: I am not finished. Be good enough to step back when I am talking to the Court and don't step in front of me.

I don't want this jury hearing whatever conversations the witness says he had with Thaler but I do respectfully object to conversations with some third party that he

1	jqlt 43
2	has yet to identify.
3	THE COURT:
4	counsel has been told t
5	one witness.
6	MR. BRILL:
7	THE COURT:
8	do.
9	MR. BRILI:
10	conversation with Mr. K
11	THE COURT:
12	ahead with the conversa
13	Q Would you
14	identification, please?
15	THE COURT:
16	along in some order and
17	it some other way.
18	A This is a l
19	Sidney Kriser of Industr
20	THE COURT:
21	conversation?
22	MR. BRILL:
3	THE COURT:
4	MR. BRILL:
11	

Kelin-direct

You have made yourself clear and hat. Confine your questions to the

I intend to offer --

I don't care what you intend to

I am going to authenticate his riser, your Honor.

Go ahead first. I told you to go tions with Mr. Thaler.

identify Plaintiff's Exhibit 8 for

I am trying to get this rolling you are constantly trying to do

letter that I received from Mr. rial Plants. Dated August 30th.

Are you finished with the other

No.

Why don't you do as the Court --

This letter will authenticate his

conversation with Mr. Kriser. It is an admission by Mr.

1	jqlt 44 Klein-direct
2	Kriser that he spoke with Mr. Klein
. 3	THE COURT: Are you through with Thaler's
4	conversation?
5	MR. BRILL: I never asked him about Thaler's
6	conversation, your Honor.
7	THE COURT: You had a chance.
8	What is this paper here you have? What is
9	that Exhibit for identification?
10	THE WITNESS: A letter from Sidney Kriser to
11	me dated August 30, 1966.
12	THE COURT: Is it an original?
13	THE WITNESS: No, it is a copy.
. 14	MR. STREAM: I will waive the best evidence
15	rule.
16	THE COURT: Mark it in evidence.
17	(Plaintiff's Txhibit 9 was received in
18	evidence.)
19	Q Who was this letter signed by? Never mind.
20	(Plaintiff's Exhibit 9 in evidence was read
21	to the jury by Mr. Brill.)
22	Q Does this letter refresh your recollection as
23	to when this telephone conversation took place?
24	A Yes, it does.
25	THE COURT: When did it take place?

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191t 45

Klein-direct

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THE WITNESS: August 30, 1966.

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Q Will you relate for us to the best of your recollection the substance of your conversation with Mr.

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Sidney Kriser on August 30, 1966?

6

7

said.

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We discussed --THE COURT: Not we discussed. I said and he

I talked to Mr. Kriser about the standby buy back agreement. He toldme that a \$350,000 buy back would he available and it would be good for 120 days. the cost would be a commitment fee of five percent on the total value of the buy back.

Q Do you remember whether anything else was discussed between you and Mr. Kriser during this conversation on August 30, 1966?

A I talked to Mr. Kriser about the format of the appraisal, about the fact that the liquidated value was not itemized for each item of equipment and he assured me--

THE COURT: What did you say, not what you talked about. Strike that part out. That is not proper.

Attempt to tell us to the best of your recollection what the substance of the conversation was, what was said by each party.

I said there was some ambiguity and some doubt

jalt 46 Klein-direct 1 in my mind as to the values that were in the appraisal report 2 Mr. Kriser said not to be concerned. He told me or gave me 3 assurance --THE COURT: Strike that, that is not allowable. 5 Did he tell you what the alledged discrepancies 6 were or did you tell him? 7 THE WITNESS: I told him, your Honor. 8 THE COURT: Go on, Counselor. 9 MR. BRILL: I was waiting for Mr. Klein to 10 relate the rest of his conversation with Mr. Kriser. 11 Mr. Kriser told me that his firm had performed 12 appraisals where the machinery and equipment would be used 13 as collateral in the past. He gave me the names of two or 14 three banks and the loan officers in the banks in New York 15 City. He told me to check with them to satisfy my mind 16 that --17 MR. STREAM: That we object to. 18 THE COURT: Strike that out. 19 MR. BRILL: Your Honor, if that is what he 20 said then that is admissible. 21 MR. STREAM: He didn't say that, Mr. Brill, 22 the witness said that. 23 Q Mr. Klein, what did he say to you, to the best 24 of your recollection? He told you to check with these lanks.

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, :		
`	1	jalt 47 Klein-cross
	2	A To satisfy myself as to the quality of the
3	3	appraisal
3	4	THE COURT: As to what?
	5	THE WITNESS: As to the quality of appraisal
	8	work that Industrial Plants had performed for the banks in
	7	the past.
	8	MR. BRILL: I ask that this document be marked
	9	as Plaintiff's Exhibit 10 for identification.
1	10	(Plaintiff's Exhibit 10 was marked for
xxx	11	identification.)
	12	Q Did you subsequently receive a letter from Mr.
0	13	Kriser?
	14	A Yes, I did.
	15	Q Can you identify this document, Plaintiff's
	16	Exhibit 10?
	17	THE COURT: What exhibit is that?
	18	MR. BRILL: Plaintiff's Exhibit 10 for
	19	identification, your Honor.
	20	THE COURT: You should say so.
	21	A It is a copy of a letter I received on August
	22	30, 1966 from Sidney Kriser.
) 7	23	
	24	MR. BRILL: I offer it into evidence, your Honor.
	25	
		MR. STREAM: Consented to.

		1	jqlt 48 Klein-direct
•		2	THE COURT: Mark it in evidence.
_		3	(Plaintiff's Exhibit 10 was received in
	xxx	4	evidence.)
•		5	(Mr. Brill read to the jury from Plaintiff's
		6	Exhibit 10 in evidence.)
		7	Q Mr. Klein, did Ajax purchase the guaranteed
		8	commitment which was proposed by Mr. Kriser?
		9	A No.
•		10	THE COURT: Did they enter into any agreement?
		11	Q Did you enter into any guarantee buy back
		12	* agreement with Industrial Plants Corporation?
0		13	A No.
		14	THE COURT: That ends that tour.
•		15	O Subsequent to your telephone conversations with
		16	Mr. Thaler and Mr. Kriser and to receipt of the letter which
		17	you have just identified
•		18	THE COURT: Exhibit what?
		19	Q As Plaintiff's Exhibit 10, did Ajax guarantee
		20	a loan for the Time & Micro?
		21	A Yes.
		22	THE COURT: Isn't that in evidence?
		23	MR. BRILL: Not yet, your Honor.
0		24	(Plaintiff's Exhibit 11 was marked for
	xxxxx	25	identification.)
•			

1	jqlt 49 Klein-direct
2	Q Can you identify Plaintiff's Exhibit 11, Mr.
3	Klein?
4	THE COURT: Now can he identify it? Was he
5	a party to this? I don't know how you get your questioning.
6	A This is a copy of a continuing guarantee between
7	Ajax
8	THE COURT: Did you sign it for Ajax?
9	THE WITNESS: No, your Honor, I did not.
10	Ω Do you know whether this document was kept in th
11	files of Ajax or a copy of this document?
12	A Yes, a copy of the document.
13	O Did you examine a copy of it at the time it
14	was signed?
15	A I have seen it, yes. I examined a copy of this
16	before.
17	THE COURT: Let me see it, please.
18	Who was Norman P. Louis at the time of this
19	date, September 1, 1966? Who was he?
20	THE WITNESS: Are you addressing me?
21	THE COURT: Of course I am. You're the only
22	witness on the stand.
23	THE WITNESS: He was president of Ajax Hardware.
24	THE COURT: Who was Ben P. Saxe?
25	THE WITNESS: He was chairman of the board of
	1 200 25024 01

. 1	jalt 50 Klein-direct
2	Ajax.
3	THE COURT: All right. Admit it.
4	MR. STREAM: May I see it first, your Honor.
5	
6	Show it to counsel.
7	MR. STREAM: Is counsel going to put in
8	the loan agreement as to which he says this is a guarantee?
9	MR. BRILL: Yes.
10	MR. STREAM: Subject to that I have no objection.
11	THE COURT: Admitted, subject to the introduc-
12	tion of the note itself.
1.2	(Plaintiff's Exhibit 11 was received in
14	evidence.)
15	Q I ask you if you can identify Plaintiff's
16	Exhibits 12 and 13 respectively.
17	A Exhibit 12 is a note in the amount of \$270,000.
18	THE COURT: Who is the maker?
19	
20	THE WITNESS: The maker is Time & Micro, signed by Shriro and Weissman.
21	
22	THE COURT: Who are they, if you know?
23	THE WITNESS: Shriro is the president of the
24	company and Weissman is the secretary of the company or the corporation.
25	
	THE COURT: Did Ajax sign this note on the back

XXXX

. 1	jqlt 51 Klein-direct
2	or is it a separate agreement?
3	THE WITNESS: The guarantee was a separate
4	agreement, your Honor.
5	THE COURT: All right. Show it to counsel.
6	THE WITNESS: 13 is the security agreement.
7	THE COURT: Is that in evidence already?
8	MR. BRILL: No, your Honor.
9	THE COURT: Show them to counsel. Offer them
10	and show them to counsel.
11	MR. BRILL: I was attempting to get them
12	identified by Mr. Klein, your Honor.
13	THE COURT: Just move it along.
14	MR. STREAM: This is not a complete exhibit,
15	your Honor. I object to it because it is not complete.
16	MR. BRILL: These are the exact exhibits
17	introduced at the last trial which Mr. Stream has said there
18	would be no objection.
19	MR. STREAM: In the interest of saving time I
. 20	will consent to it. Let it go in.
21	THE COURT: All right.
22	Q Mr. Klein, did you receive the invoice from
23	Industrail Plants for their appraisa.?
24	A Yes, I did.
25	(Plaintiff's Exhibits 12 and 13 were received
	in evidence.)

	1	jjlt 52 Klein-direct								
0	2	MR. BRILL: I am waiting for Mr. Stream to get								
_	3	the original of the document, your Honor. If he doesn't								
0	4	have it I am willing to offer the duplicate.								
•	5	(Plaintiff's Exhibit 14 and 15 were marked								
xxxx	6	for identification.)								
	7	MR. STREAM: I consent that it be received in								
•	8	evidence.								
	9	MR. BRILL: 14 is consented to.								
•	10	(Plaintiff's Exhibit 14 is received in								
xxxx	11	evidence.)								
	12	Q Can you identify Plaintiff's Exhibit 15,								
0	13	Mr. Klein?								
	14									
	15	the second invoice that Ajax								
	16	in the amount of \$4,422.								
	17									
	18	and an addition, can you cell us?								
	19	on								
	20	October 5, 1966.								
•	21	MR. STREAM: Consented to.								
	22	(Plaintiff's Exhibit 15 was received in								
D ×z×	23	evidence.)								
		MR. BRILL: I ask you to mark these two								
O	24	documents.								
	25	MR. STREAM: Can we take a two-minute recess?								

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jqlt 56

fact. There is proof in this courtroom of a payment of that fee. I have a cancelled voucher of Ajax covering it and the witness can easily identify that voucher. I see no reason why we should bypass it.

Klein-direct

MR. BRTLL: If you want to offer this on cross examination, you offer it. I would ask the Court's permission to read the stipulation from the pre-trial order to the fact of payment.

MR. STREAM: I object to it.

THE COURT: The letter shows the payment, doesn't it?

MR. BRILL: No, your Honor.

Never mind, your Monor.

THE COURT: All right, withdrawn.

O Mr. Klein, did Time& Micro repay the loan when it came down?

A No.

Q Did there come a time thereafter when the machinery and equipment which was the security for the loan guaranteed by Ajax was put up for auction sale?

A Yes.

MR. BRILL: Again, I propose to read from the pre-trial order at this time, stipulation number 10, concerning the retention of defendant to conduct an austion

1	jqlt 58 Klein-direct
2	myself.
3	MR. BRILL: We are all grateful to you for that
4	
5	1966
6	THE COURT: This is number 9? What page is it?
7	MR. BRILL: I was reading from a different
8	copy.
	MR. STREAM: Next to the last page of the order
10	of this Court and it is the second page of appendix A called
11	stipulations.
12	MR. BRILL: At the end of the pre-trie order,
13	the second to the last page.
14	THE COURT: You want to read which one?
15	MR. BRILL: Starting with number 9, your
16	honor.
17	THE COURT: And 10?
18	MR. BRILL: 9, 10, 11 and 12.
19	THE COURT: All right. No objections to those?
20	MR. STREAM: No, your Honor.
21	MR. BRILL: Stipulation number 9, your Honor,
22	"On or about November 30, 1966 plaintiff paid
23	to defendant the sum of \$4,422.71 in complete payment of
24	defendant's appraisal fee."
25	Stipulation number 10: "On or about August 25,

jalt 59

Klein-direct

1967, Time & Micro and the First Western Bank & Trust
Company, the bank, employed defendant to conduct an auction
sale of the various pieces of machinery and equipment at the
Time & Micro plant which auction sale defendant conducted
on or about October 10, 1967."

Stipulation number 11, your Honor: "Defendant | publicized and advertised said auction sale prior to the date thereof."

The final stipulation which I intend to read, number 12; "The proceeds of the said auction sale for the item sold amounted to \$144,278."

the Court will go today and I will tell you my situation.

Some of you may at some time in your life if you are old enough, have had a dental operation known as root canal jobs. I had one and apparently it was successful but the pain has continued and I am going back to the expert the specialist to see if he can find out why today and I have to get there around 4:30. So I am going to leave now. Come back at 10 o'clock and continue to heed my instructions. Thank you for your attention.

(Trial adjourned to October 15, 1975 at 10 am.)

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may *herefore disregard the statement as made as to any such effect. You may ultimately hear more about the facts relative to this phase of the case but, in any event, you will withhold any determination about it until afteryou have heard the proof admitted and subsequently after you have heard the charge of the Court in reference to the same.

This stement, however, and I emphasize this, by the Court, is in no way to be deemed to indicate any further ruling by the Court as to the admission of evidence with respect to this phase of the case.

You may proceed, counselor.

MR. BRILL: Thank you, your Honor.

May I refresh the jury's recollection as to where we ended last night?

THE COURT: No, you may not. They listened and they are supposed to remember. You don't need to go back to that.

DIRECT EXAMINATION (continued)

BY MR. BRILL:

Q There was testimony yesterday concerning an auction sale of certain machinery and equipment at the Time & Micro plant.

Do you know whether or not this auction sale

•		
	1	qb-3 Klein-direct
\bigcirc	2	was publicized or advertised before the sale?
•	3	THE COURT: That is of your own knowledge. Do
\circ	4	you or don't you?
	5	THE WITNESS: Yes, sir, it was.
	6	THE COURT: Is that an affidavit of publica-
	7	tion?
•	8	MR. BRILL: No.
	9	THE COURT: What is it?
	10	MR. BRILL: Exhibits admitted at the first
•	11	trial, your Honor.
	12	THE COURT: Offer them.
• ~	13	MR. BRILL: You will recall we have a stipu-
	14	lation that all exhibits admitted in the first trial will
	15	be admitted in the second trial.
•	16	THE COURT: Yes.
xxx	17	
	18	(Plaintiff's Exhibit 20 was marked for identi- fication.)
	19	MR. STREAM: If counsel will show it to me, I
	20	will probably stipulate to let it go in without authentica-
	21	tion and the same applies to any other documents that
_	22	deal with the auction.
,	23	THE COURT: All right. Thank you, Mr.Stream.
×××	24	(Plaintiff's Exhibit 21 was marked for
	25	identification.)
1		A-1137

•		1	qb-4 Klein-direct							
1	xxx	2	(Plaintiff's Exhibit 22 was marked for							
		3	identification.)							
		4	MR. STREAM: We consent that Exhibits 20, 21							
		5	and 22 be admitted into evidence.							
•		6	THE COURT: Very well.							
	xxx	7	(Plaintiff's Exhibits 20, 21 and 22 were re-							
,		8	ceived in evidence.)							
		9	MR. BRILL: I would like to show one of these							
	1	10	exhibits to the jury if I may.							
,	1	11	THE COURT: Pass it around if you want to.							
	1	12	(At this point Plaintiff's Exhibit 20 in							
	1	13	evidence was read, in part, to the jury by Mr.							
	1	14	Brill.)							
	1	15	Q That was prepared, I assume you will stipulate,							
	1	16	by Ajax, is that right?							
	1	17	MR. BRILL: By Industrial Plants Corporation,							
	1	18	your Honor.							
	1	19	THE COURT: All right.							
	2	20	Q Was all the equipment at the Time & Micro							
	2	1	plant sold at the auction?							
	2	2	A No. To the best of my recollection there were							
	2	3	approximately 80 items of machinery and equipment that							
	2	4	were not sold.							
\bigcirc		5								

Klein-direct

Q	Did	you	or	Ajax	hav	e any	re	sponsi	bili	ty in
connection	with	the	ren	mainir	ng e	quipme	ent	which	was	unsold
at the auct	tion?									

A Yes, I acted on behalf of Ajax to have that machinery -- it had to be removed from the plant, from the Time & Micro plant, and I arranged for it to be moved to a different location for storage and I made several efforts to attempt to dispose of it through private sale.

Q Mr. Klein, did you have any conversations with any representatives of the defendant, Industrial Plants
Corporation, subsequent to the auction sale in October 1967?

MR. STREAM: Objection, irrelevant, immaterial.

MR. BRILL: I intend to show an admission by Mr. Thaler. I also intend to introduce evidence which is very material to the defense.

THE COURT: ton't discuss that now.

MR. BRILL: If I may approach --

THE COURT: No, you may not. It is unnecessary.

I will take the testimony subject to a motion to strike it out.

MR. BRILL: Thank you, your Honor.

- Q Could you answer the question, Mr. Klein.
- o I did have several conversations with officials of Industrial Plants Corporation.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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Klein-direct

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THE WITNESS: To the best of my recollection --

THE COURT: And by whom.

THE WITNESS: Mr. Thaler said that he was extremely sorry as a result of the sale at the auction, that he didn't know what to tell me except that he had made a big mistake in the appraisal. He mid that the only excuse he had was that he wasn't given enough time to research the value of the equipment properly because we had asked for the report in a very rapid number of days, in a very short number of days.

MR. BRILL: I have no further questions. I would only offer one exhibit.

THE COURT: Get the exhibits in that you want to offer now, counselor.

MR. BRILL: This is simply a calendar that I would like to introduce.

THE COURT: What is the calendar about?

MR. BRILL: It is a 1966 calendar that I want to introduce into evidence for the convenience of the jury in following certain dates.

THE COURT: Show it to counsel.

(Plaintiff's Exhibit 25 was marked for identification.

MR. STREAM: Mark it in evidence.

25

Klein-direct

cross

(Plaintiff's Exhibit 25 was received in

evidence.)

MR. BRILL: I have no further questions.

MR. STREAM: May I ask your Honor to inquire whether the jury prefers to have that on and put up with the noise or off and have it quiet, whichever they wish.

THE COURT: All right. I guess they want it shut off.

CROSS-EXAMINATION

BY MR. STREAM:

about that you say you had by yourself at an airport hotel some time in March or around March 1968 with Mr. Thaler, did you ever record it in writing, did you ever send him a letter and confirm what he said? Can you answer that yes or no?

A I don't recollect.

Q Did you ever make a memorandum of that conversation, that important conversation between the two of you alone in a hotel? Did you ever do that?

THE COURT: Do you understand the question?
Read the question.

(Question read.)

A No.

1	cb-16 Klein-cross
2	Q I didn't hear you.
3	I don't remember.
4	Q I want to be sure that not only Mr. Gasden but
5	alternate juror in the corner can hear you, so keep your
6	voice up, please.
7	You told us during your direct by the way,
8	Mr. Klein, are you here under a subpoena?
9	A No.
10	Q Are you presently connected in any way with
11	this plaintiff company called Ajax Hardware?
12	A No.
13	Q Were you ever a stockholder of that company?
14	A No.
15	Q Was it a public company?
16	A No.
17	Q Do you have any connections of any kind with
18	it today?
19	A No.
20	Q Do you have any interest in this lawsuit?
21	A No.
22	Q At whose request are you here?
23	A The attorneys for the plaintiff.
24	THE COURT: What is that
25	THE WITNESS: The attorneys for the plaintiff.

1	qb-11 Klein-cross
2	THE COURT: Were you at any time a stockholde
3	of Ajax?
4	THE WITNESS: No, I was not.
5	THE COURT: Are you now?
6	THE WITNESS: No, I am not.
7	Q Tellme this, sir, you joined that company in
8	1961, isn't that right?
9	A That is right.
10	Q Please keep your voice up.
11	A Yes.
12	Q And you left some time in March of 1968, isn'
13	that a fact?
14	A That is right.
15	Q Having risent to the rank of executive vice-
16	president, isn't that so?
17	A Yes.
18	Q That was second in command, isn't that so?
19	A Yes.
20	Q I didn't hear you.
21	A Yes.
22	THE COURT: Speak up, sir.
23	MR. BRILL: Perhaps if we turn off the other
24	air conditioner Mr. Klein can be heard more clearly.
25	There idn't seem to be the same problem during the

1 qb-12 Klein-cross 2 direct examination. 3 THE COURT: Part of it can be remedied if he 4 attempts to speak up more. 5 Q The president of the company at the time when 6 you were connected with it was a gentleman named Norman 7 Louis, isn't that so? 8 That is right. 9 And you and he were the two principal officers 10 of that company, isn't that so? 11 There were other officers. 12 I said you two were the principal officers. 0 13 I can't say that. 14 MR. BRILL: Objection. 15 There was a chairman of the board. 16 Who was he? 17 MR. BRILL: Instruct the witness not to answer 18 when there is an objection pending. 19 THE COURT: I didn't hear an objection. 20 MR. BRILL: I objected to Mr.Stream's question 21 on the ground that it called for a conclusion of the 22 witness. 23 THE COURT: Overruled. He ought to know who the officers were. 25 MR. BRILL: He asked if they were the two

1	qb-13 Klein-cross
2	principal officers.
3	THE COURT: He was there and he knows. Let
4	him say so.
5	Q Mr. Klein, you were the executive vice-president,
6	right?
7	A Yes.
8	Q And Mr. Norman Louis was the president, isn't
9	that right?
10	A Yes.
11	Q And he was the chief executive officer of the
12	company, was he not?
13	A Yes, he was.
14	Q Andyour role was, was it not, to supervise
15	operations on a day-by-day basis, or as you put it day-to-
16	day, isn't that so?
17	A Yes, sir.
18	Q And also to develop new business, isn't that right
19	A Yes.
20	Q What did Mr. Louis have to do in connection
21	with this company? What were his responsibilities?
22	A He was the chief executive officer. And he
23	was my boss.
24	Q Would you be good enough to tell me, sir, what
25	were his responsibilities in broad strokes?

- 11	
1	qb-14 Klein-cross
2	A He was responsible for the policy of the company
3	the overall financial matters of the company, and the
4	marketing strategy of the company.
5	Q And the what?
6	A Marketing strategy of the company.
7	Q You and he operated out of the same general
8	offices in Los Angeles, isn't that so?
9	A Yes.
10	Q And you saw him from day to day, right?
11	A Yes.
12	Q And you consulted with him and he consulted with
13	you, isn't that right?
14	A Yes.
15	Q He is connected with Ajax to this very day,
16	isn't that so?
17	A I can't answer that.
18	(Try to.
19	A I don't think he is.
20	Q You don't know?
21	A I said I don't think he is. He has resigned
22	as president of the ocmpany.
23	Q Is it your testimony, sir, that you don't know
24	that he comes in to the offices of Ajax several times each
25	week, you don't know that?

1	qb-16 Klein-cross
2	A It had its main facility in the city of
3	Industry, California, and it has a second facility in
4	Edgerton, Wisconsin.
5	THE COURT: Where is the second one?
6	THE WITNESS: Edgerton, Wisconsin.
7	Q Did it own that facility?
8	A Which facility?
9	Q The facility in Wisconsin.
10	A To the best of my recollection it was leased.
11	It was not owned.
12	Q So the answer is no, right?
13	A To the best of my recollection.
14	Q The plant or the operation in the City of In-
15	dustry, is that what you call it, the City of Industry?
16	A Yes.
17	Q What is that, a suburb of Los Angeles?
18	A Yes.
19	Q Would you understand me to mean that suburb if
20	refer to it simply as Los Angeles?
21	A Yes.
22	Q The Los Angeles plant, what kindof manufacturing
23	did it do there? That is, if you know.
24	A I am not sure I understand your question.
25	Q Let me see if I can by the way, please
	z zot me coe zz z can - by the way, prease

1 qb-17 Klein-cross state that to be so if you don't understand my question, don't hesitate, say I don't understand it. 3 The facility at Los Angeles, Mr. Klein, what 5 kind of manufacturing activities did it engage in in the f, 1964 and 1965 and 1966? . 7 It did metal stamping. 8 I beg your pardon? 9 It performed metal stamping, stamping of 10 metal, die casting operations. 11 0 Pardon? 12 Die casting, automatic assembly, plating of 13 various types and automatic packaging operations. 14 I didn't hear the end of that. 15 Packaging operations. 16 Insofar as these manufacturing operations were 17 concerned, not the assembly part, but the actual production 18 part they dealt, did they not, with the production of 19 this so-called cabinet hardware, the kitchen and the bathroom 20 hardware that was manufactured, isn't that right? 21 That is right. Ajax was not geared to do precision instrument 23 manufacturing, was it? Yes or no. 24 A No. 25 And that was the case in 1966 as well, isn't that A-1150

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Klein-cross

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Klein -cross

Am I correct, sig, in understanding your testimony to be that at the beginning of 1966 Ajax was not then geared up for precision instrument manufacturing, is that a true statement?

> A Yes.

By the way, do you remember in February of 1973 being asked to answer a series of written questions which were put to you by counsel for the plaintiff in this action, your counsel, or the plaintiff's counsel?

> A Yes.

And counsel for the defendant, my firm, do you remember that?

> A Yes.

Would you be good enough please to look at this document which I hand you and would you please tell us whether or not this isn't the original counterpart of that --

THE COURT: Let it be marked for identification.

MR. STREAM: Note it is being marked Defendant Exhibit A.

> (Defendant's Exhibit A was marked for identification.)

- Do you remember the question?
- You asked me to identify this. A
- Do you remember seeing that at about the date on

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1	qb-20 Klein-cross
2	there and putting your signature on that date on there?
3	A Yes.
4	Q And you did that, did you not, on April 30, 1973,
5	am I right?
6	A I don't remember the date. If that is what
7	it says
8	Q Look at it and tell me whether that is not the
9	case, April 30, 1973.
10	A Yes.
11	Q. Then you swore an oath, did you not, that all
12	of the answers therein contained were accurate, complete
e 13	and true, isn't that so?
14	A Yer
15	Q Before a notary public licensed in the State
16	of California, right?
17	A Right.
18	Q You had seen the questions which were posted
19	to you in that interrogation before you were called upon
20	to answer them, isn't that so?
21	A Yes, sir.
22	Q Where did you go to prepare your answers to
23	this deposition? To these questions. I am referring
24	to Defendant's Exhibit A for identification. Did you go
25	to your lawyer's office?

I don't understand that question.

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Klein-cross

THE COURT: That is clear enough. Repeat the question, Mr. Reporter.

(Question read.)

A My answers represented-THE COURT: Yes.

THE WITNESS: Yes.

Q Certainly your recollection in 1963 -- I beg your pardon, your recollection in February -- I withdraw that. Your recollection in April of 1973 was certainly better with respect to the transactions as to which you gave testimony then than they are now, isn't that so?

A I assume that is so, yes.

Q Iwant you to consider and address your attention to Time & Micro, Mr. Klein, and tell us please when first did you get introduced to that company in Strasburg, Pennsylvania?

THE COURT: I don't know that that is clear exactly, counsel.

Q When was the first time that you met with anybody connected with Time & Micro, a plant operation located in Strasburg, , Pennsylvania?

MR. BRILL: There is no foundation. There is no testimony that he erver met with anybody at Time & Micro-MR. STREAM: He will tell us.

	1	qb-23 Klein-cross
\supset	2	THE COURT: That objection is overruled.
	3	MR. STREAM: Answer the question.
	4	A To the best of my recollection it was some time
	5	in 1966.
	6	Q Sir, every answer you gave is supposed to be
	7	to the best of your recollection, isn't that so?
	8	THE COURT: You mean here today?
	9	A Yes.
	10	Q So it isn't necessaryfor you to answer the
	11	questions to the best of your recollection. We will expect
	12	it is to the best of your recollection. You don't have
\bigcirc	13	to tell the jury that. They will understand it is to
	14	the best of your recollection. Do I make myself clear, sir?
	15	A I am not sure you do.
	16	THE COURT: It seems to me it is clear enough.
	17	Q At the beginning of 1966, whom did you meet
	18	with?
	19	A From Time & Micro?
	20	Q That is what we are talking about, sir.
	21	A I met a Mr. Jacob Schriro.
,	22	Q He was the president of Time & Micro, isn't that
'	23	right?
)	24	A Yes.
	25	Q What was the full name of that company, do you

	1	qb-24 Klein-cross
0	2	remember that?
	3	A Time & Micro Instruments Incorporated.
\supset	. 4	Q And it had previously been known under the name
•	5	of Precision Time Corporation, has it not?
	6	A Yes.
,	7	Q You say that Mr.Shriro was the owner of the
	8	company, did you say that?
	9	A I said he was president.
•	10	Q You knew he was the owner too, didn't you?
	11	A. He was a shareholder. I don't recall who the
	12	owners were. It is a corporation. I don't recall who
\circ	13	all the shareholders were.
	14	Q Is it your testimony that you didn't know that
	15	Mr.Shriro owned substantially all of the outstanding
	16	stock of Time & Micro, is that your testimony?
	17	A You asked me if he is the owner
	18	Q Is thatyour testimony?
	19	A You are going to have to ask me the question
	20	again.
	21	Q I would be happy to. Mr.Shriro was the
	22	owner of substantially all of the outstanding stock of
-	23	Time & Micro at the beginning of 1966, isn't that so?
\bigcirc	24	A I don't know who owned the stock-
	25	Q Did you meet with him?
	11	

1 qb-25 Klein-cross 2 For clarity I am going to answer this in my 3 own way. I can't answer yes or no. He controlled it but I think the shares of stock were owned by some trusts 5 and other entities. 6 But the fact is you did understand that he did 7 control that company, right? 8 That I did. 9 And this meeting took place where? 10 I think it was in New York. A 11 Who was present at the meeting at the beginning 12 of 1966 when you met with Mr. Shriro in New York? 13 I can't recall. 14 How about Mr. Louis? 15 I don't think he was there. 16 But you were there, were you not, in your 17 capacity as -- what did you all yourself, executive vice-president in charge of among other things the develop-18 19 ment of new business, isn't that right? 20 A Yes, sir. 21 And you met with Mr. Shriro in New York at 22 the beginning of 1966 to try to make a deal with him, isn't 23 that so? 24 A No. 25 MR. BRILL: Objection. I don't recall the

1	qb-26 Klein-cross .
2	testimony being at the beginning of 1966.
3	THE COURT: He is asking a question. I hear
4	no objection.
. 5	MR. BRILL: It is a compound question. He
6	said you met at the beginning of 1966 60 do something and
7	I don't recall the testimony placed the meeting at the
8	beginning of 1966.
9	THE COURT: Overruled. He can answer it. If he
10	can't answer it and he doesn't know, let him say so.
11	A I don't know what you mean by deal.
12	Q YOu don't. But you remember meeting with him
13	at the beginning of 1966, right?
14	A That I do, yes.
15	Q By a deal, Mr. Klein, I mean the ordinary
16	garden variety understanding of the term, to try to make
17	some kind of arrangement, a business arrangement, or busi-
18	ness deal, that is what I mean by a deal, okay?
19	Do you understand what I mean now by a deal?
20	THE COURT: Ask him a question now.
21	Q Do you understand what I mean by a deal?
22	A I am not sure I still do, no.
23	Q Mr. Klein, when you met with Mr. Shriro who
24	controlled Time & Micro in New York in 1966, at the
25	beginning of the year, did you not discuss with him the

1 qb-27 Klein-cross 2 possibility of making a business arrangement that 3 would involve Ajax andTime & Micro? 4 A Yes. 5 What kindof a deal did you discuss with him 6 for Time & Micro and Ajax? 7 MR. BRILL: Objection, hearsay. 8 THE COURT: Overruled. We don't have to have 9 a dictionary definition for each word. 10 MR. BRILL: I am not objecting to the word 11 "deal." I am objecting to any testimony as to what Mr. 12 Shriro may have said in a conversation with Mr. Klein. 13 That is strictly hearsay. Or as to what Mr. Klein said 14 to Mr. Shriro. 15 THE COURT: Overruled if that is your objection. 16 I discussed the possibility of Time & Micro 17 becoming a subcontractor to Ajax in the manufacture of 18 timing devices for fuses. 19 And that discussion took place, did it not, 20 because before then Ajax became aware that it had an oppor-21 tunity of securing a prime contract in the United States 22 Government to do that, isn't that so? 23 I don't recall. 24 You don't recall?

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explode, right?

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little devices which tell the weapon or the arament when to

1	qb-29 Klein-cross
2	A Right.
3	Q And that little timing mechanism couldn't
4	be made by Ajax at its facilities, could it?
5	A Not in 1966.
6	Q And so you went to meet with Mr. Shriro to try
7	to see whether you could work a subcontract deal wit-
8	him at Time & Micro to make that aspect of the fuse, right?
9	A Yes.
10	Q and it was an important element of the device,
11	wes it not?
12	A Yes.
13	Q And in fact only Bencix do you know the
14	company called Bendix?
15	A Yes.
16	Q Only Bendix had the precision instrument
17	agency at that time to allow the manufacture of those timing
18	devices, isn't that so?
19	A I don't think that is correct.
20	Q Did Bendix have a contract with the United States
21	Government to manufacture fuses?
22	A Ican't remember. I couldn't say. There
23	were many contractors that made fuses.
24	Q Did Mr. Haakensor come from Benfix?
25	A I don't think so.

1.	dp-30	Klein-cross
2	Q	Where did he come from?
3	A	He had had numerous jobs
4	0	Where did he come from when he joined you?
5	A	I don't remember.
6	2	Do you remember his first name?
7	Α.	Yes, I do.
8	Q	Do you know what job was assigned to him when
9	he joined Aj	ax?
10	A	Yes, I do.
11	Q	What was the job?
12	A	He was the fusing engineering manager.
13	Q	Fusing engineering manager.
14		And he had had experience in precision
15	instruments	and precision machinery, had he not?
16	A	He had.
17	Q	And he was the man that was going to do what,
18	go down to T	ime & Micro and manage that plant?
19	A	Yes.
20	Q	We are not that far but I just wanted to
21	get that cle	ared up. He was a man by the way that you
22	sent down wi	th Mr. Jesse Thaler the day of the appraisal on
23	August 15, 1	966, isn't that right?
24	A	Yes.
25	Q	He didn't go down as a messenger boy, did he?
1		

1 gby-31 Klein-cross 2 No. 3 Tell us what happened during the rest of this conversation with Mr. Shriro when you told him that you had 5 this opportunity to bid on a -- I will withdraw that. 6 Had you yet bid on that Government contract to 7 manufacture fuses? 8 I can't recall the sequence. 9 You mean you can't remember the answer to my 10 question? 11 I can't remember when I met Shriro the first 12 time. I said some time in 1966. 13 No, sir, yoou said at the beginning of 1966. 14 Do you want to change that now? 15 MR. BRILL: I object to the characterization 16 of changing testimony. 17 THE COURT: It is always permissible to revise 18 it, counselor. 19 Overruled. 20 Do you want to change that, sir? 21 A The beginning of 1966 if it means from January 22 through June, the first six months, then I will let it stand. 24 Q I don't think that we understand the beginning 25 to be as far into the year as June, but you tell us what you

1	qb-32 Klein-cross
2	mean by the begin ning of 1966 when you described the
3	meeting with Mr. Shriro in New York as having taken place
4	at that time.
5	A Some time in the first six months of the year.
6	Q At that point in time you had been on that
7	Government contract, isn't that a fact?
8	A I don't remember if it is a fact.
9	Q You can't deny that you did, you just don't
10	remember one way or the other, is that right?
11	A I don't remember when the proposal for the
12	Government contract was submitted.
13	Q Do you have the proposal with you here in the
14	courtroom?
15	A No, I don't.
16	Q Do you have that Government contract here in
17	the courtroom?
18	A No, I don't.
19	Q Does counsel have that Government contract here
20	in the courtroom?
21	A I don't know.
22	Q It was eventually signed, wasn't it?
23	A Yes, it was eventually signed.
24	Q Between the United States Government or a
25	branch of it, and Ajax Hardware, isn't that right?
NAME OF TAXABLE PARTY.	

1 qb-23 Klein-cross 2 That is right. 3 And Ajax Hardware was designated as the prime 4 contractor, right? 5 A Right. 6 On a contract calling for \$3 million in pro-7 spective payments, right 8 MR. BRILL: I object to this and all other 9 questions concerning the Government contract unless they are narrowly limited in scope and rather than argue this 10 in front of the jury, I prefer to either approach the 11 12 bench or go into chambers so we can settle right now what 13 is admissible and what isn't admissible. 14 THE COURT: Overruled. Let him answer as far 15 as he knows. 16 MR. BRILL: The characterization of the amount 17 of the contract --18 Answer it please. Q 19 THE COURT: He was with Ajax. He should know and I am going to let him answer the question if he can. 20 - 21 Do you remember the question? 0 22 THE COURT: Read the last question. 23 (Question read.) 24 You are going to have to let me see the contract 25 if you want me to say --

1 qb-34 Klein-cross You haven't got the contract in court, have Q 3 you? I don't have it, no. 4 5 MR. BRILL: At this point, your Honor, I 6 renew my objection. 7 THE COURT: You do not have the floor at this 8 moment. Counsel is addressing questions or about to. 9 You have no right to intercede. He is conducting this 10 cross-examination. He has a right to do so unimpeded by 11 any interruptions which are unwarranted. 12 MR. BRILL: Yes, your Honor, but I believe I 13 have the right to make an objection before a document --14 THE COURT: There is no question. You can't 15 make it before the question is elicited. 16 MR. BRILL: I object that any further discussion 17 of the Government contract and particularly any discussion 18 of the documents which counsel is about to have marked 19 for identification be had. I think it would be prejudicial 20 to the plaintiff to proceed with identification of this 21 document before I am allowed to have my objection ruled 22 upon. 23 THE COURT: Overruled. I will rule on it 24 I overrule your objection. now. 25 (Defendant's Exhibit B was marked for

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XXX

25

Klein-cross

identification.)

Q Mr. Klein, will you be good enough to look at Defendant Exhibit B for identification and notice if you will under Section 1 of this document under Column F the figure which appears thereon.

Do you see that figure?

MR. BRILL: Objection.

THE COURT: Yes, offer the document or have him identify it.

MR. STREAM: I am going to ask him to refresh his recollection. Do you see that figure?

THE WITNESS: Yes.

Q Does it refresh your recollection of a Government contract involving potential or prospective or estimated payments to Ajax of \$3,08,000, yes or no?

A It doesn't refresh my memory that this is the contract.

Q I didn't ask that. I said does it refresh your recollection that under that contract your company was expecting to get \$3,018,000, yes or no?

A I am trying to tell you --

MR. BRILL: Objection.

THE COURT: Overruled. Please answer the question, Mr. Witness.

1	qb-36 Klein-cross
2	THE WITNESS: I have answered his question.
3	THE COURT: You have not answered it. Repeat
4	the question, Mr.Reporter.
5	(Question read.)
6	A I said no, not this document.
7	Q It doesn't refresh your recollection?
8	A This is not a signed contract. We bid how
9	do I know this wasn't a proposal?
10	THE COURT: Strike out about what this is.
11	A This is a proposal, it isn't a contract.
12	Q A settlement proposal, isn't it?
13	Did you look at that word?
14	MR. BRILL: Objection.
15	THE COURT: Wait a minute before you proceed
16	with your objection, counselor.
17	Have this marked for identification.
18	MR. STREAM: I will withdraw my question. I am
19	going to offer this in evidence based on the stipulation
20	and admission of authenticity of counsel for the plaintiff.
21	MR. BRILL: I request at this point that we have
22	the opportunity to make full argument and objection to
23	this document and all further questions concerning it out
24	of the presence of the jury.
25	THE COURT: I am not going to take any unlimited

21

22

23

24

25

qb-37

Klein-cross

display of questions at this time. We will have a short recess and this is the only thing that will be discussed at this point.

You may step out, members of the jury.

(Jury left the courtroom.)

MR. STREAM: I would like the witness excused.

THE COURT: Step out, Mr. Klein.

MR. STREAM: Let me make a statement about this.

THE COURT: Was this covered by the stipulation?

MR. STREAM: You bet it is.

MR. BRILL: It is not covered.

MR. STREAM: We served requests for admission upon the attorneys for the plaintiff on September 24, 1973, and those requests for admissions were consented to in a stipulation between counsel for the parties dated September 30, 1975, which reads in part, your Honor, (1), "in response to the defendant's requests for admissions dated September 24, 1975, plaintiff admits the genuineness of the documents described therein and numbered 1 through 12, with several minor corrections."

MR. BRILL: If I may shorten this --

THE COURT: Keep still, will you? I hate to do this, but why do you interrupt counsel?

MR. BRILL: I am trying to show --

Klein-cross

THE COURT: You are not assisting the Court and I want no interruption of counsel. He lets you speak, you should let him speak.

MR. BRILL: I have not had the opportunity to speak. is my objection and I have the opportunity to speak inbehalf of it. There is no dispute as to authenticity.

THE COURT: He is answering it now and I will take his answer.

MR. BRILL: The objection is to relevance and not authenticity. He is talking to a different issue.

THE COURT: Is your objection solely relevancy?

MR. BRILL: Relevancy and prejudice.

THE COURT: That objection is overruled.

MR. BRILL: I have not had an opportunity to state what it is. Mr.Stream at this point is seeking to introduce before the jury evidence that the plaintiff submitted claims to the Government for losses on the basis of our fuse contract. He seeks to place before the jury the fact that we claim some \$400,000 from the Government on behalf of Ajax and its subcontractors, and that we received eventually some \$150,000 for Ajax and an additional \$90,000 for all of Ajax subcontractors, your Honor.

These payments have nothing to do with this lawsuit. They

were not based on the loss of the loan guarantee in this lawsuit, your Honor. If these payments are placed before the jury this case will be fatally prejudiced and the plaintiff will not have an opportunity to have a fair trial, indeed as far as I am concerned it would be grounds for an immediate mistrial.

THE COURT: I have to decide that, counselor.

MR. BRILL: I withdraw that comment.

THE COURT: Don't prophesy what I will do.

MR. BRILL. I withdraw that comment, your

Honor. Let me restrict my comments to my objection.

THE COURT: Please do.

MR. BRILL: Mr.Stream based on what he stated in his opening statement intends to argue to the jury that because Ajax received some \$250,000 from the Government out of this fuse contract, out of losses arising out of this fuse contract that the jury is entitled to consider whether or not any or all of these sums should be applied against our loss on this loan guarantee.

Your Honor, I say that is simply absurd and it is prejudicial. One thing has nothing to do with another. If Ajax made certain outlays and certain investments in connection with the fuse contract it may have been entitled, certainly the fact that whether it was entitled to obtain

qb-40

Klein-cross

reimbursement for those losses and expenses is not part of this lawsuit. Whether or not --

THE COURT: That is what you say.

MR. BRILL: Whether or not we got that money we suffered the loss on the loan guarantee and if it had not been for the defendant's negligence and breach of contract we would not have suffered that \$160,000 loss and we still would have received the same money back from the Government.

THE COURT: This is a question of whether there is in effect a setoff which could have been exercised by Ajax.

MR. STREAM: May I be heard?

THE COURT: Are you through now?

MR. BRILL: I reserve the right to reply after Mr.Stream explains the relevance of his offer.

MR. STREAM: Let me put this back into focus, your Honor. One of the defenses in this case is mitigation. It may be that counsel will prove that none of this money that the plaintiff obviously and irreversibly received should be applied as an offset but that is a matter of proof during trial and it is my right to offerin evidence documents that bear upon that element.

They are most certainly relevant documents and

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since their authenticity is conceded I propose to introduce them in the course of time and place the plaintiff -place before the plaintiff the burden which it has to prove it suffered financial loss in this transaction.

MR. BRILL: This is a new theory of proof that the plaintiff --

THE COURT: I heard it several days ago.

MR. BRILL: That the plaintiff suddenly -all Mr. Stream has to do is put the documents in evidence,
throw them before the jury and we suddenly have to prove
it is not an offset when it is evidence on its face it is not
an offset.

Isn't there some minimal requirement that

Mr. Stream can demonstrate that under any possible argument

some portion or all of these money can be --

THE COURT: Are you saying that the standard is beyond a reasonable doubt or something?

MR. BRILL: No, I am saying the standard is relevance. It is an affirmative defense which he has pleaded and it is part of his case. The burden is not ours to disprove every sum of money that he may seek to put in evidence and to show it does not apply to this lawsuit.

THE COURT: Are you through now?

1 qb-42 Klein-cross 2 MR. BRILL: No, I am not. 3 THE COURT: Continue and complete. MR. BRILL: If that would be the standard I fail to see what the limit would be to any possible pay-5 6 ments that Mr.Stream could put into evidence. 7 Honor, what if we had --8 THE COURT: Don't make any suppositions. That 9 is speculative. 10 MR. BRILL: One further objection is that while Mr.Stream is arguing forthright to put in this evi-11 12 dence as part of his own case, it is not proper cross-13 examination and properly admitted now on the cross-examina-14 tion of Mr. Klein. He did not testify to this matter. 15 MR. STREAM: I have the scope of the case on cross 16 MR. BRILL: Not with the new Federal rules. 17 MR. STREAM: I have raised an affirmative 18 defense. 19 MR. BRILL: That is part of his case, your 20 Honor. 21 MR. STREAM: I asserted as an affirmative de-22 fense that the plaintiff mitigated its damages in full 23 and I am going to put in that evidence unless the Court forbids it, and I am going to say nothing more on the 24 25 point.

1 qb-43

Klein-cross

I want to get back to my cross.

MR. BPILL: He said it is part of his case, not part of my case.

MR. STREAM: Part of this case.

THE COURT: Look, counselor, you don't deny that counsel has a right as a part of his case to extract admissions and proof on cross-examination and that is what this is. I am going to reserve decision for a little while.

MR. BRILL: Thank you, your Honor.

(Recess.)

(In open court; jury absent.)

THE COURT: I must say, gentlemen, that I have deliberated upon the questions arising by this offer and by the objections made to it by counsel.

As to the objection procedural in character

I read from Rule 611 of the Rules of Evidence recently
enacted by Congress, particularly Rule 611, which reads,
"11(b)) Scope of Cross-examination. Cross examination
should be limited to the subject matter of the direct examination and matters affecting the credibility of the
witness. This the Court may in the exercise of discretion
permit inquiry to additional matters as if on direct
examination." Therefore, there is no problem there.

*

The objection made by counsel as to relevancy must be overruled. The document is admissible as are possibly other documents, and I don't pass on any others relating to the prime contract and any compensation received fr?m the Government by Ajax as a result of the Government's premature termination of said contract, subject, however, to such connection being made by the defendant with respect to payment as may show a valid claim of Ajax against Time & Micro arising out of the payment -- by the Government to Ajax on behalf of Time & Micro.

I do not rule any other evidence now.

MR. BRILL: I am not sure that I understand the full extent of your ruling. If I do understand it correctly, whatyou said --

THE COURT: You want it read again? I am not going to expound on it.

MR. BRILL: I think what you said, correct me if I am wrong, is this evidence is being admitted subject to later connection of a possible claim that Ajax has against Time & Micro based on a portion of this claim. I think your Honor must be directing himself to the \$20,000 contained in this claim.

THE COURT: That is mentioned.

MR. BRILL: Yes, your Honor. That \$20,000

qb-45

Klein-cross

claim --

THE COURT: I am not going to listen to any argument further. I asked you if you were through before. I will not have any post-mortems on this before. That is my ruling.

MR. BRILL: It is a question of the propriety of your ruling. You are admitting this subject to later connection which cannot possibly be made.

THE COURT: That will no doubt come forth as to whether it is or isn't.

MR. BRILL: If it can't be made --

THE COURT: I won't listen to any further argument by you. You had your chance.

MR. BRILL: Your Honor --

MR. STREAM: May I therefore ask the Court since it is now 12:00 o'clock to be allowed promptly to resume my cross. I would like to get the jury back and get more cross. We are going to be at it all day.

THE COURT: We will go to a quarter of 1:00, counselor.

MR. BRILL: Your Honor, I renew my objection based onthe ruling as you have made it. This simply admitting this evidence and putting it before the jury later to striking it later is fatally prejudicial to

1 gb-046 Klein-cross 2 ploaintiff's case and I move for a mistrial. 3 THE COURT: Denied. I have faith that the jury will comply with my directions. The witness may come 4 5 up and take the stand. 6 HOWARD KLEIN resumed. 7 (In open court; jury present.) 8 MR. STREAM: I renew my offer and request that 9 Exhibit B for identification be received into evidence. 10 MR. BRILL: Same objection as stated before, 11 your Honor. 12 THE COURT: As stated previously on the record 13 in the absence of the jury, it is overruled, on certain 14 conditions. 15 (Defendant Exhibit B was received in 16 evidence.) 17 MR. BRILL: Once again I move for a mistrial. 18 THE COURT: You don't need to move more than 19 once. It is denied and the jury may disregard it. I 20 don't know how many times you want to raise a certain ques-21 tion. This isn't that kind of a contest or shouldn't 22 be at least. 23 CROSS-EXAMINATION (continued) 24 BY MR. STEAM: 25 Q I will save my description of this for summation, A-1179

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Klein-cross

your Honor.

Mr. Klein, in Defendant's Exhibit B received in evidence, you will see that there is a reference made to your company, Ajax Hardware. Would you be good enough to notice that please, and I will look at a copy of it from the podium. Do you see that there?

A Yes, sir.

Q That_proposal was submitted by Ajax to the United States Government at a later date after some time in 1967, is that right?

A That is right.

MR. BRILL: Objection. I think all these documents speak for themselves and I object to any questioning based on the documents.

THE COURT: Overruled.

Notice if you will that in Section 1, which is called "Status of Contract," or "Order at effective date of termination," and we will get into the termination later, there is a reference to unfinished or work not commenced on a fuse contract with a dollar value assigned to it of \$3,018,000, isn't that right?

A Right.

Q That was the transaction, wasn't it, Mr. Klein, that you were telling this jury about before when you said

1 qb-48 Klein-cross that you had a meeting with Mr. Shriro at the beginning 2 3 of 1966, and maybe it was as late as June, right? It was in connection with that contract that you had your 5 talks with Shriro in 1966, right? 6 Not only this contract. 7 That and the subcontracts that were required, 8 right? 9 A No, that is incorrect. Ajax at that time was 10 involved in more than one proposal for fuses. My discussion with Mr. Shriro was on a general basis, not only 11 12 for this contract but any contract that possibly would 13 require a timing device. 14 Q Were you negotiating additional contracts with 15 the United States Government for the manufacture of fuses 16 at that time? 17 We had a prior contract for a fuse prior to A this one. 19 0 From whom? 20 The United States Government. 21 Was it in force and effect in the beginning of 0 1966? Not in the beginning of 1966, but during A 1966. 25 During 1966 you had two Government contracts Q in force and effect? A-1181

SOUTHERN DISTRICT COURT REPORTED

1	qb-49 Klein-cross
2	A Yes.
3	Q One was terminated, right?
4	A Yes.
5	Q And what happened to the other one?
6	A As far as I know when I left the ocmpany it
7	was still an active contract.
8	Q Was Time & Micro a subcontractor on that one
9	also?
10	A No.
11	Q Who was the subcontractor on the other?
12	A There were various subcontractors.
13	q But not Time & Micro?
14	A That is correct.
15	THE COURT: You say Time & Micro were not
16	a party to the other contract, is that so?
17	THE WITNESS: That is so.
18	THE COURT: All right.
19	Q Mr.Klein, you talked at that meeting with Mr.
20	Shriro not only of a subcontract, you talked about a part-
21	nership, a joint venture, so to speak, didn't you?
22	A I believe we did, yes.
23	Q A joint venture or a partnership by which you
24	at Ajax and the people at Time & Micro would share the
25	business of Time & Micro on a formula basis, right?

1	qb-50 Klein-cross
2	MR. BRILL: I would renew my objection to
3	
4	conversation with Mr. Shriro.
5	THE COURT: It is not hearsay. It isn't
6	hearsay at all.
7	Oversaled.
8	A We talked about various business arrangements.
9	Q Didn't youtalk about a business arrangement
10	which among other things would have permitted Ajax to share
11	in the business of Time & Micro on a percentage basis?
12	Did you talb about that?
13	A Not onthat basis, no.
14	Q Didn't youtalk about buying up a position in
15	the Tim & Micro company?
16	A They had no business.
17	Q Didn't you talk about buying up a position,
18	meaning a stock position, a co-ownership of Time &
19	Micro?
20	A We talked about buying a co-ownership, yes.
21	Q And you talked about that in the context of
22	the expected Government contract, isn't that right?
23	A On a more general basis than that.
24	Q Did you ever go down to see the plant at
25	Strasburg, Pennsyhlvania?
	A-1183

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

	1	qb-51 Klein-cross
	2	A Yes, I did.
	3	THE COURT: The Time & Micro plant.
	4	MR. STREAM: Yes, sir, Time & Micro.
	5	Q And you got a copy of the brochure of that
	6	plant operation, didn't you, at one time?
	7	A Yes.
	8	Q Would you be good enough to tell me, please,
	9	whether the document or the brochure I hand you now which
	10	is going to be marked Defendant Exhibit C for identifica-
	11	tion isn't a copy of the brochure which you received from
	12	Mr. Shriro?
) xxx	13	(Defendant's Exhibit C was marked for
	14	identification.)
	15	A Yes, that is a copy of the brochure.
	16	Q That is the kind of brochure that Mr. Shriro
	17	gave you, right?
	18	A Yes.
	19	Q And he gave it to you so you would become
	20	familiar with the operations of Time & Micro, right?
	21	A He gave it to me so I could see what the
	22	facility looked like.
	23	Q To become familiar, with the facility, right?
)	24	MR. BRILL: I object. Mr. Klein cannot poss-
	25	ibly know why Mr. Shriro gave him something. It calls

1	qb-52 Klein-cross
2	for a conclusion as to Mr. Shriro's state of mind.
3	THE COURT: Sustained as to that question
4	in those terms.
5	Q Did you give that brochure to the United States
6	Government at any time?
7	A I don't remember.
8	Q Probably, right ?
9	A It is possible.
10	Q Probably, right?
11	A It is possible.
12	MR. STREAM: I offer this in evidence.
13	MR. BRILL: Objection, your Honor, on the grounds
14	that the document is irrelevant to this case, it is hearsay
15	to the extent it is offered for the truth of any of the
16	statements contained in it and for the further reason that
17	there is no sufficient foundation and that Mr. Klein has not
18	identified it as anything being given to the Government.
19	THE COURT: I shall have to sustain the
20	relevancy objection.
21	MR. STREAM: I offer it to show the familiarity
22	of the witness to the plant. I renew the offer for that
23	purpose of establishing that he had familiarity of the
24	plant of Time & Micro.
25	THE COURT: Accepted solely for that purpose.

•		
	1	qb-53 Klein-cross
	xxx 2	(Defendant's Exhibit C was received in
	3	evidence.)
	4	
•	5	MR. STREAM: If the Court will allow, I would like to pass this to the jury.
	6	
	7	THE COURT: All right, give it to the Number 1 juror.
•	8	
	9	Q You had only one such meeting with Mr. Shriro
	10	or did you have several early in 1966?
		A I had more than one meeting with Mr. Shriro.
	11	Q During the course of those meetings you received,
	12	did you not, the Hirschmann appraisal which you identified
\bigcirc	13	duringyour direct examination?
	14	A I am not sure whether I received it at a
	15	meeting or it was mailed to me.
	16	Q But at that point in time, at the beginning of
	17	1966, the fact is that you did receive Plaintiff's Exhibit
	18	1 and Plaintiff's Exhibit 1A, isn't that so, and I hand those
	19	exhibits to you so that you can see what they are.
	20	
	21	And B is the report from Hirschmann, isn't it?
	22	
	23	- received these two documents.
	24	and that the, right?
)	25	A What is at about that time?
		Q You got them before you met with Mr. Thaler,

	1	qb-54 Klein-cross
	2	didn't you?
	3	A Yes.
)	4	Q And you read them, didn't you?
	5	A Yes.
	6	Q And you showed them to Mr. Louis, didn't you?
	7	À Yes.
	8	Q And did you give them to anybody else like the
	9	United States Government or don't you remember?
	10	A I don't remember.
	11	Q When you read that letter from Hirschmann
	12	Corporation marked Plaintiff's Exhibit 1A and signed by
\circ	13	Mr. Martin H. Kaefer as vice-president, you noticed,
	14	didn't you, that the letter said in the second paragraph gen
	15	erally speaking the equipment is well-kept, clean and
	16	in good condition, do you see that?
	17	A I see that.
	18	Q By the way, this letter is dated July 1964,
	19	isn't that right?
	20	A That is right.
	21	Q That is about two years before you engaged
	22	Mr. Thaler to do the appraisal onbehalf of Industrial
į	23	Plants, isn't that right?
)	24	A That is correct.
	25	Q And you noticed, didn't gu, the statement in

and which reads, "We believe to the best of our judgment that we of the Hirschmann Corporation being agents and national distributors for Swiss and German high precision machine tools are well-qualified to make appraisals of this type. We have vast experience in this connection and are frequently called upon to make appraisals on trade-ins and to counsel insurance companies with reference to appraisals of equipment of the type in question," right?

You noticed that when you got that document, isn't that so?

- A Yes, I did notice that.
- Q And will you be good enough to turn to the general comments which are on page 3 of the exhibit which counsel for the plaintiff offered and was received in evidence.

Notice towards the bottom of the page there is a statement made by Mr. Kaefer in behalf of this company called the Hirschmann Corporation to the following effect:

"These preliminary statements are recorded in order to put the appraisal of the equipment of the former Precision Time Corporation in proper perspective," and then it continues in this vein, "It is indeed remarkable that this

1 qb-56

Klein-cross

company has accumulated such a complete line of watchmaking machines and of such high calibre."

You noticed that, didn't you?

A Yes, I noticed that.

Q And you certainly looked at the appraisal which accompanied that letter, didn't you, Mr. Klein, the one marked Defendant's Exhibit 1?

A Yes.

Did you notice when it was given to you the comment on the top page of the exhibit under the heading I, "Production" -- the one that reads, "Production Equipment," and then it continues to say "The basic equipment corresponds to the best types available short of the fully-automated equipment specifically designed for high production."

You noticed that, didn't you?

A Yes.

Did you notice also this statement made by that company in 1964 when you were given these documents by Mr. -- that is you received them one way or the other from Mr. Shriro's since some machine types are under Swiss export embargo it is noteworthy that their number is so adequate. This allows certain machines to remain set up on a specific operation which is the preferred practice

1 gb-57 Klein-cross for watch production." 2 3 Did you notice that? 4 Yes, I noticed that. 5 Did you notice under the schedule called "Qual-6 ity Control and Engineering," the comment, "The inspection 7 of the premises, equipment and methods showed that the 8 quality control was practiced according to good, accepted 9 standards of the industry." 10 Did you notice that? 11 Yes. 12 These two documents, both Exhibit 1 and Exhibit 13 1A, which we are going to call collectively the Hirschmann 14 report, were given to you for what purpose, Mr. Klein? 15 MR. BRILL: Objection, your Honor. How does 16 he know what the purpose of Mr.Shriro was in giving him 17 the documents? 18 THE COURT: The question might be somewhat --19 MR. STREAM: I will withdraw it, your Honor. 20 THE COURT: Improper at least in its form. 21 Mr. Klein, did you ask that these be given Q 22 to you? 23 Yes, I did. 24 What did you say you wanted them for, Mr. 25 Klein? Tell the jury.

1	qb-58 Klein-cross
2	A So I would know that I wanted an inventory of
3	the machinery and equipment in the plant.
4	Q The inventory and the values, isn't that so?
ð	Isn't it?
6	A No, I wanted the inventories.
7	Q Are you an engineer?
8	A I am an engineer.
9	Q Are you a licensed engineer?
10	A No,I am not.
11	Q Doyou hold an engineering degree out of an
12	accredited college?
13	A I do.
14	Q What college?
15	A University of Southern Calif-rnia.
16	Q What were you going to do with the inventory
17	of machinery?
18	A I wanted to see if it would match a list that
19	our engineers had prepared of what was required to manu-
20	facture certain timing devices for fuses.
21	Q Are you telling this Court and thisjury that
22	youdidn't take any interest or give any effect or con-
23	sideration to the appraisal which was an expression of value:
24	A I looked at it, but I was not willing to accept
25	an appraisal that was ordered by a seller on a company
11	

1	qb-59 Klein-cross
2	that we were talking about possibly
3	Q Buying into?
4	A Working some type of arrangement with.
5	Q You mean arrangement to buy into it, right?
6	A Not necessarily to buy into.
7	Q To buy out of?
8	A We talked about many arrangements.
9	Q But they all dealt with the continuation of the
10	business of Time & Micro as a plant, didn't they?
11	A Time & Micro
12	THE COURT: Just answer the question.
13	MR. BRILL:Objection.
14	A I can't answer that yes or no, your Honor.
15	MR. BRILL: I have an objection, your Honor.
16	There is no testimony that anything could be continued.
17	The testimony is that Time & Micro was idle.
18	THE COURT: He can answer it.
19	MR. BRILL: That is an assumed fact in the
20	question, your Honor. It is not that he doesn't know.
21	THE COURT: The objection is overruled.
22	Q I will rephrase the question so we can get an
23	answer to it.
24	In these discussions that you told this jury
25	you had with Mr. Shriro you talked about a subcontract
11	

2	for Time & Micro that would have involved the operation
3	of that plant for the Government contract, right?
4	A I talked to him, yes.
5	Q And you talked to him about a possible joint
6	venture deal or a partnership deal, didn't you tell us that
7	A Yes.
8	Q And that involved the continuation or the use
9	of the plant as a going facility, isn't that right?
10	MR. BRILL: That is a compound question, your
11	Honor.
12	THE COURT: Overruled. I don't think it is
13	so compound that he can't answer it.
14	A I talked to Shriro about utilizing the facility
15	That facility was shut down.
16	Q But you talked to him about a joint venture or
17	partnership agreement that involved among other things your
18	buying into Time & Micro to continue to operate Time &
19	Micro as a going plant, isn't that what you talked about?
20	A To start it up as a going plant.
21	Q To start it up and use it as a going plant, is
22	that correct?
23	A Right.
24	Q Not to sell it on the auction block, right?
25	A That is correct.

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Klein-cross

qb-60

MR. BRILL: Objection, what was two years -THE COURT: Sustained as to form only. Restate your question.

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Q In these discussions with Time & Micro, Mr.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

1 qb-63 Klein-cross 2 Various fuse contracts. 3 This was the closest to consummation, isn't 4 that so, that is to say the one we are talking about, 5 the \$3 million contract, is that so? 6 I am not completely sure this was at that 7 time. MR. BRILL: Objection, your Honor. 9 THE COURT: Sustained. 10 MR. BRILL: Please don't continue to answer 11 the question if there is an objection. 12 Q When did you begin to talk about the possibility 13 of lending or guaranteeing or financing or assisting 14 in the financing of some funds to Time & Micro? When did 15 that conversation take place? 16 THE COURT: With whom? 17 With Mr. Shriro. 18 It took place during one of our meetings. 19 I can't remember which one. 20 THE COURT: Approximately when, Mr. Witness? 21 THE WITNESS: Some time prior to August of 1966. 22 By that time had the Government made its pre-23 award survey of the facilities of Time & Micro? 24 MR. BRILL: Objection. 25 THE COURT: If you know.

	1	qb-64 Klein-cross
.0	2	Q If you know.
_	3	A I don't kn ow.
	4	Q A u familiar with the fact that before
9	5	a contract is let to a subcontractor by the Government
	6	that a team inspects or surveys a facility? Are you
	7	familiar with that?
•	8	A Sometimes they do, yes.
	9	Q Does that refresh your recollection that you
•	10	provided a survey team to the United States Government
	11	with a copy of the Hirschmann report and a copy of the
	12	brochure?
°0	13	A It might have been given. I didn't personally
	14	provide it.
	15	Q Did you instruct somebody to do it?
	16	THE COURT: Did you instruct somebody to do
	17	it?
•	18	A I don't remember. I don't recollect.
	19	Q Nevertheless you did eventually work out a deal
	20	which is to say a contract with Time & Micro, and I mean
	21	by "you," Ajax, isn't that right?
,	22	A That is correct.
	23	Q Do you know an Howard Gowertz?
0	24	A I know a Harry Gowertz.
	25	Q Harry Gowertz?
•		

1	qb-65 Klein-cross
2	A Yes, sir.
3	Q Do you remember hiring him at Ajax?
4	A I didn't hire him, Norman Louis hired him.
5	Q Do you remember Mr. Louis hiring him?
6 .	A Yes.
7	Q Where did he come from?
8	A Bulova Watch.
9	Q What did you hire him for?
10	A When I resigned and left the company he was my
11	successor.
12	Q What did you hire him for?
13	A I told you, I didn't hire him.
14	MR. BRILL: Objection on the grounds of rele-
15	vancy if Mr. Gowertz was hired after Mr. Klein left the
16	company. This can't be relevant to any of the facts
17	THE COURT: The question is was he hired before
18	he left the company.
19	MR. STREAM: It would move much faster if counsel
20	said objection and theCourt sustains or overrules it.
21	Q Let me help you along. Did Mr. Louis hire
22	Mr. Gowertz before or after you left the ocmpany?
23	A After I left the company.
24	Q Did Mr. Haakenson get hired before you left
25	the company?

	1	qb-66 Klein-cross
•	2	A Yes, he did.
	3	Q When didyou first make a formal bid on the
	4	Government contract?
•	5	MR. BRILL: Objection, which Government contra
	6	Q From this point on we are talking only and
•	7	exclusively and entirely talking about the Government
	3	contract for the manufactur e of fuses under the prime con
	9	tract to your company calling for ultimate payments of
•	10	\$3,018,000. Are you clear on that now?
	11	A Yes, sir.
	12	Q When did you fir : make a formal bid on that
0	13	contract as a prime contractor?
	14	A I couldn't tell you without seeing the document
•	15	Q Was it in 1965? Just give us the year that
	16	your company first made that bid. You were the man in
	17	charge of business development, am I right?
	18	A The bid was made in 1966.
	19	Q Was it made before June or after June?
	20	A That I can't tell you.
	21	Q You can't tell us?
	22	A No.
	23	Q Do you remember, was it a matter of weeks or
\bigcirc	24	months before pu were awarded the contract?
	25	MR. BRILL: Objection, your Honor.

1 qb-67 Klein-cross 2 THE COURT: Overruled. 3 Ican't tell you whether it was weeks or one or two months. 5 Q Can't you remember? Give us your best 6 recollection as you sit here on the witness stand today. 7 The proposal was submitted somewhere, it could 8 have been between June and September for the contract. 9 I can't tell you when in that span of time. 10 Have you got the proposal here? 11 No. 12 Did the proposal list the subcontractors 13 that you proposed to use? 14 I don't remember. I think it did. 15 And you don't remember as you sit here today 16 whether that proposal preceded the award by a week or a 17 month or a year, you have no way of remembering that at 18 all, is that a fact? 19 MR. BRILL: That is not what his testimony was, 20 objection. 21 THE COURT: Overruled. Counsel is entitled 22 to reasonable cross-examination. 23 A I know it wasn't a year prior. But you are 24 asking for a fine point whether it was weeks or months and 25 I can't tell you the differential between whether it was

1 qb-68 Klein-cross weeks or one or two months. 3 Q Could it have been a couple of months? It could have been. 5 The fact is it was a bid that you had made 6 before you entered into the so-called loan agreement with 7 Time & Micro, that is a fact, isn'c it? 8 A I amnot sure of that. 9 You don't deny it, do you? 10 I amnot sure of that. 11 You don't deny it, do you, sir? 12 I don't deny it. A 13 And that was the agreement, the so-called loan 14 and security agreement which was received in evidence as Plaintiff's Exhibit 13 and which I show you once more. 15 16 Let the record show that I hand the witness the 17 security agreement. 18 THE COURT: You better repeat the question, 19 Mr.Reporter. 20 (Question read.) 21 MR. BRILL: I think we better reread the 22 previous question to the reference. 23 MR. STREAM: I will withdraw the question. 24 I will restate it. 25 THE COURT: All right, restate the question. A-1201

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Kleinecross

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MR. STREAM: I withdraw that question. was referring to the wrong exhibit.

Q And the loan and security agreement to which I referred in my last question is this document marked Plaintiff's Exhibit 4 in evidence, isn't that so?

A Yes.

That was the document that you signed and which you said a minute ago you weren't sure whether you had submitted your bid to the Government before or after you signed that contract, isn't that so?

A The particular one contract, we are talking about this one specific contract, right?

Q Yes, talking about the Government contract.

A That is right, this is the document that I am not sure when the initial proposal was submitted to the Government on that specific contract.

THE COURT: This agreement Exhibit 4 is dated August 18, 1966.

Q But you do not deny, sir, that the Government bid or your bid to the Government on that fuse contract could have been made before the date of this contract, right?

It could have been made before, yes, sir.

And that was the loan and security agreement between your company and Time & Micro, right?

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1	qb-70	Klein-cross
2	A	Yes, sir.
3	Q	Didyour lawyers draft that, do you remember?
4	A	It was jointly drafted by the lawyers.
5	Q	You read it, didn't you, before it was signed?
6	A	I read it, yes.
7	Q	Do you recognize Mr. Louis' signature on it?
8	A	Yes,I do.
9	Q	Mr. Shriro's signature on it?
10	A	Yes.
11	Q	Do you recognize the schedule attached to it?
12	It was ther	e, wasn't it, when it was signed?
13		Yes.
14	Q	But that is a schedule, isn't it, of the Hirsch-
15	mann apprais	sal, isn't that so?
16	A	That is so, but this schedule
17	Q	Is that not so, yes or no?
18		MR. BRILL: The witness is attempting to answer
19	the question	
20	Q	Is that not so, yes or no, no buts.
21		THE COURT: Clarify your question.
22	Q	Is that not a schedule attached to that agreement
23	a counterpar	t of the so-called Hirschmann report which is
24	Exhibit 1 in	
25		THE COURT: You are referring to Exhibit 4 and
		and and

XXX

1	qb-72 Klein-cross
2	THE COURT: Objection overruled.
3	MR. BRILL: We are wasting time. I will con-
4	cede that they are counterparts of each other.
5	A These two are not.
8	MR. BRILL: I will withdraw my concession. Let
7	Mr. Klein answer the question.
8	Q The pages are in different order, but they are
9	all there.
10	The appraisal that you bought from Industrial
11	Plants Corporation is not attached to this agreement, isn't
12	that a fact?
13	THE COURT: Referring to what agreement?
14	Q Plaintiff's Exhibit 4.
15	A But it was supposed to be
16	Q Please answer my question.
17	MR. BRILL: He is attempting to answer it in
18	a proper legal matter.
19	THE COURT: Objection overruled and I direct the
20	witness to answer.
21	MR. BRILL: He can explain if it was attached
22	in some literal sense.
23	THE COURT: Your objection is out of order.
24	You don't facilitate the trial of this case, counselor.
25	MR. BRILL: We are going around and around in
	The second and alound in

1	qb-74 Klein-cross
2	. Kiein-closs
	THE COURT: This agreement is what exhibit?
3	Q Plaintiff's Exhibit 13. You told us during
4	direct that you spoke with Mr. Thaler on August 10, right?
5	MR. BRILL: Objection, your Honor.
6	A August 13, I said.
7	Q You didn't speak to him on the telephone on
8	August 10, two days before your meeting with him, is that
9	your testimony?
10	A I did not.
11	Q Who did?
12	A If somebody did it was Ben Saxe, who arranged
13	our first meeting.
14	Q Were you there when the call was placed?
15	A No, I was not.
16	Q Did you ask for it to be placed?
17	A No,I did not ask for it to be placed.
18	Q Anyhow on August 13 you met with Mr. Thaler,
19	right?
20	A Right.
21	Q That was a Friday, right?
22	A Right.
23	Q And then on the following Monday which was the
24	15th, the appraisal took place, right?
25	A The inspection took place.
ele.	

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qb- 76

Klein-cross

question in 1973, and giving the following answer under oath at that time, and I address your attention to page 4 of that deposition, Question Number 13:

"Q What did you say to Mr. Thaler, what did Mr. Thaler say?

"A I told him Time & Micro may become a vendor or a joint venture partner to Ajax in the fuse manufacturing program, and that Time & Micro had to repay a loan obligation and"-- and I want you to pay attention to the following part of your answer in particular -- "and possibly Ajax would assist them and that we must be certain of the real value of the machinery and equipment before we became involved financially in assisting them with their loan repayment problem and that the approximate amount of the loan was in excess of \$250,000."

Do you remember making that statement?

MR. BRILL: Objection. If Mr. Stream is attempting to show that those words weren't used in the Jeposition, I refer his attention to Question 15 --

MR. STREAM: May I please not be interrupted like

THE COURT: If it was intended as an objection,

I don't think it has a merit. He asked him about a

particular statement on page 4.

qb-77 Klein-cross

Q Do you remember making that statement?
Would you like to look at it? I will put the deposition before you.

MR. BRILL: What is the purpose of this questioning?

THE COURT: That objection is overruled and I insist that you do not interrupt the question. You wait until the question is asked, counselor. I am not going to have any more of that sort of practice.

MR. BRILL: Is there a question pending.

THE COURT: Yes, you heard ... If you didn't I will ask the reporter to read it.

MR. BRILL: Would you do that, please, your Honor.

THE COURT: Yes, I suppose that will. That takes more time.

MR. STREAM: I will do it fast. Look at those words and tell me whether I didn't read them as you yourself dictated them and swore to them as accurate, complete and truthful on that page which is page 4. Did you say them?

A This is my deposition, is it not? Yes, I already signed it.

Q Those are the words, I just read them to you?

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Klein-cross

A Right.

Q I call your attention to the fact that in there you said, "Possibly Ajax would assist them in that financial transaction." Yesterday you said that you told Mr. Thaler that you contemplated an advance or guarantee and you told that to this jury. Do you remember that, using those particular words?

A Yes.

Q An advance or a guarantee, right?

A Right.

Q Did you tell the truth yesterday or did you tell the truth when you signed the sworn statement, which one?

MR. BRILL: Objection. May I approach the bench, please?

THE COURT: No, you may not. Objection over-

MR. BRILL: This is an unfair attempt to destroy his credibility. The same words were used on Question 15.

THE COURT: Credibility may be tested.

MR. BRILL: He is asking whether he was telling the truth --

THE COURT: Objection overruled. I don't want to hear any more about it.

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THE WITNESS: Restate your question.

I will be happy to.

Yesterday in court you swore that you said to Mr. Thaler these words on August 12, 1966, in New "We contemplated an advance or guarantee of a loan to T & M, Time & Micro," -- do you remember using those very words to this jury under oath?

Yes.

Q And do you remember in answer to Question 12 asking you what did you say to Mr. Thaler, saying to him in your answer to Question 12 in your deposition in 1973, when your recollection was so much better you told this jury this morning, "Among other things that Time & Micro had to repay a loan obligation and possibly Ajax would assist them and that we must be certain of the real value of the machinery and equipment before we become" -- please sit down -- "before we became involved financially in assisting them."

Do you remember using those words in this carefully answered deposition after consulting with counsel in California? Do you remember that?

MR. BRILL: Objection. It is unfair and prejudicial for Mr. Stream to pick out portions of Mr. Klein's deposition testimony and I request that he be shown

Klein-cross

the deposition so he can review it before he is forced to answer the question.

THE COURT: Show it to him, counselor.

MR. BRILL: And direct his attention to the entire conversation.

MR. STREAM: No, sir. I am very upset at that suggestion of counsel. I want this witness to tell me whether he employed those words at that point in his answer and I have every right to do that.

THE COURT: The objection is overruled. The witness is required to answer.

MR. BRILL: You also direct that he se shown a copy of his deposition before he answers.

THE COURT: He will do that too.

MR. BRILL: The objection was that he was forced to state whether he was telling the truth now or then so that he be allowed to examine the entire deposition testimony on that point before he is forced to make that answer.

MR. STREAM: I don't think that is_right in front of a jury, your Honor, really I don't.

THE COURT: That objection is overruled.

Counsel is entitled to examine on credibility and this seems an appropriate thing to do.

qb-81

Klein-cross

Q I want you to notice from line 15 to line 22 on page 5, Question 15 and your answer, which I have read once, twice and three times to you, and the jury.

Rhad it to yourself, please.

Did you read it to yourself?

A I have read it.

Q Did I correctly relate to this jury and read to them from your answer at that point that you told Thaler you wanted an itemized appraisal -- I am sorry, that is the wrong page. Read from line 18 to line 27 on that page 4, which is Question 12, and the relevant portions of your answer to that question.

(Pause.)

Have you done that? REad as far as I told you to read, would you do that, please?

MR. BRILL: That is not proper.

THE COURT: Overruled.

MR. STREAM: I will never get done if he pops up like a jack-in-the-box.

THE COURT: Overruled. I don't want it repeated.

Let the question be asked before you start to object.

Q Mr. Klein, when you told the reporter in this sworn carefully-prepared answer, done after consulting with counsel when your recollection was fresher in 1973

that what you said to Mr. Thaler was only that you were 2 3 thinking of assisting in the repayment of a loan --4 That isn't the only thing I said. 5 MR. BRILL: There is no testimony that was the 6 only thing stated. That is a mischaracterization of the 7 testimony, your Honor. 8 THE COURT: We are going to recess and I want 9 counsel to stay a few minutes after the jury leaves. 10 (Jury left the courtroom.) 11 THE COURT: I want to say something to Mr. 12 Brill particularly. Your conduct this morning is anything 13 but proper. You must wait until the questions are com-14 pletely asked before you start to object. You do not 15 give counsel the appropriate courtesy which the conduct 16 of any trial in this court at least requires. I want it 17 stopped the way you conducted yourself. 18 MR. BRILL: May I say something on the record, 19 your Honor? 20 THE COURT: No, you may not. 21 MR. BRILL: The record will reflect plaintiff 22 has not been given an opportunity to state objections. 23 THE COURT: What is your objection? 24 MR. BRILL: Out of the presence of the jury,

I want to state that Mr.Stream's cross-examination in

A-1215

Klein-cross

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qb-82

qb-83

Klein-cross

an attempt to show a prior inconsistent statement is simply an unfair reading of the deposition. On the very next page Mr. Klein used those exact words. He said I told Mr. Thaler that we wanted to know if on a forced sale there would be enough value to assure Ajax protection on the advance --

THE COURT: You may bring that out on your redirect and that is the way to handle it, not the way you tried to.

2:15, gentlemen.

(Luncheon recess.)

AFTERNOON SESSION 2:15 P.M.

(In the robing room.)

THE COURT: I want to say that I am a little concerned about the situation which took place before we recessed this noon.

As I recall the question Mr.Stream asked it was whether the truth was as stated by him yesterday or stated in the answer to No. 12. If you can find No. 12 answer, that I suppose would be a logical question.

However, if you get over into some other page here, on page 5, I believe it is, there was another answer and so apparently as I get it now the objection was to the part of the question compelling the witness to answer which time he was telling the truth.

MR. BRILL: That is correct, your Honor.

THE COURT: While it could very well be deferred until the redirect, I would like to see it _ straightened out now if possible, if you can see a way to do it, Mr.Stream.

MR. STREAM: I am going to read both. I am going to read that question directly next.

THE COURT: With that understanding I don't think anything further need be said.

MR. STREAM: Of course I am going to do that.

qb-85

between what was said on page 4 here and what was said yesterday.

MR. STREAM: Exactly.

THE COURT: When were you telling the truth,

THE COURT: Obviously there is no inconsistency

don't say that. Elicit did you say so and sc yesterday and did yousay the answer to question 12.

MR. STREAM: I am also getting to something else too, because we have a lot of ground to cover and I am trying to cover it as expeditiously as I can. I told Mr.Brill in recess, Judge, that there is only the slightest likelihood that I will finish by the end of the day. It isn't likely -- maybe I will finish by the end of the day. I must go through this witness completely and toward that end I told him that I would not make his road any tougher if he were to excuse one of his experts, Mr. Sinclair, who came from Hamilton, the witness who was here at the last trial, until Monday, because there is no way this case can be finished before then anyhow.

Today is Wednesday. We won't get down with the cross until the end of today or early enough in the morning so that it isn't important.

Then tomorrow counsel wants to call Mr. Sinclair and he is the appraisal expert and that will be

gb-86

a full day because it is a morning and an afternoon, of course.

THE COURT: That is all right, if you two agree on that.

MR. BRILL: We agree.

MR. STREAM: I told him on Friday we would devote ourselves to reading the testimony of Thaler and this other fellow, Mr. Kaefer. I want to talk about that now.

Then on Monday we will take Mr. Sinclair and that may be the last day unless I decide --

THE COURT: As far asyou can state what you have just come to an agreement about on this record.

MR. STREAM: It is on the record.

MR. BRILL: That Mr. Sinclair will be presented on Monday, your Honor. He was here today, but since he won't be reached and since he has other commitments for tomorrow and Friday, he will appear --

THE COURT: What are those commitments?

MR. BRILL: He is the president of the State

of Pennsylvania, the Board of Directors of the State of Pennsylvania College and University or StateCollege System and they are holding a board meeting tomorrow at which he is scheduled to preside.

THE COURT: When did he die?

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a fact.

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MR. STREAM: He died within the last year. I served him with a subpoena in the last trial and I got a medical certificate that there was no way he could come in.

THE COURT: Are you content with the reprsentations by counsel?

MR. BRILL: I don't contest the representation of Mr. Kaefer and I don't contest Mr. Thaler. But as to the medical certificate --

MR. STREAM: The reason that Mr. Thaler's deposition is being read is that he is no longer employed by the company and he is retired and a resident of Florida, period. The reason that Mr. Kaefer's deposition is read is that he is deceased so that the jury does not say where are these guys.

THE COURT: That is fair enough.

MR. BRILL: I agree to that certainly. As long as we are on housekeeping, during the reading of the deposition of Mr. Thaler, which will probably take place either tomorrow afternoon or Friday, I will have certain objections probably to questions which Mr. Stream wants to read.

THE COURT: Indicate which those are.

MR. BRILL: As they are read --

Klein-cross

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qb-90

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Yes.

Q And do you remember also making this statement at page 5 of the same deposition, which you swore to in 1973, and this is in response to question #14 or 15,

rather, "what if anything did youtell Mr. Thaler about the

nature of the appraisal you wanted him to make.

"A I told Thaler I wanted an itemized appraisal of each piece of equipment and not an appraisal of the entire unit value as a watch manufacturing plant. I toldThaler that we wanted to know if on a forced sale there would be enough value to assure Ajam' protection on the advance or guarantee of approximately \$250,000 on the mortgage debt of this machinery."

Do you remember saying that also?

A Yes.

Q During this conversation with Mr. Thaler, did you tell him the reason that you were interested in making a deal with Time & Micro along the lines that you said in these various statements of yours was because you expected a Government contract, the fuse contract, and proposed to use either -- Ajax either as a vendor, so to speak, or as a joint ventor or subcontractor, did you do that?

MR. BRILL: Objection. I think there was a

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Klein-cross

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qb-92

1	qb-93 Klein-cross
2	you said, "We wanted the appraisal done right away,"
3	do you remember telling him that?
4	A I don't know if I used the words "right away"
5	but I did tell him that I wanted it done immediately.
6	Q Let me call your attention to your answer to
7	Question 17 which begins at the bottom of page 5 and
8	continues at the top of page 6. By the way, you read
9	this deposition during the lunch time, didn't you?
10	A No, I didn't.
11	Q When did you read it last?
12	A I read it prior to coming to trial.
13	Q When?
14	A Yesterday, last night.
15	Q Question 17, line 18, at the bottom of page 5:
16	"Q What if anything discussions took place at that
17	meeting, (with Mr. Thaler,) with respect to when the
18	appraisal was to be made and reported." And do you
19	remember giving this answer:
20	"A To the best of my recollection I told Thaler
21	we wanted the appraisal done right away."
22	Does that refresh your recollection that you
23	used those words?
24	A Words substantially to that.
25	Q I beg your pardon? Those precise words.
- 11	

1	qb-94 Klein-cross
2	You don't doubt those were the precise words you swore
3	to when you signed the deposition?
4	A These are the words of the deposition and sub-
5	stantially it is what I told Thaler.
6	Q You said to him you wanted the appraisal right
7	away, those words, isn't that so?
8	A I might have said to him. That could be right
9	away too.
10	Q Did you lie when you used the words right away
11	in your deposition in the sworn answer I just read to you?
12	A No. I am not expected to remember every word
13	for seven years as long as I substantially say to the best
14	of my knowledge what I think happened.
15	THE COUP" Let's not have any explanations.
16	Q When you signed this deposition in 1973 and
17	you said then that to the best of your recollection you
18	used the words "I told Thaler we wanted the appraisal
19	done right away, " did you mean that to be a true and com-
20	plete answer to the best of your recollection?
21	A Yes, substantially, yes.
22	Q And it was that, wasn't it?
23	A Pardon?
24	Q And it was that?
25	A Yes.

1	qb-95 Klein-cross	
2	Q He told you, did he not, thathe had some	
3	scheduling difficulties in that connection, right?	
4	A He did.	
5	Q And this was at the meeting held on Friday,	
6	August 12, 1966, isn't that so?	
7	A Yes.	
8	Q And you had heard of this company and its	
9	name for the first time August 10, two days before on that	
10	Wednesday, isn't that so?	
11	MR. BRILL: Which company?	
12	Q Industrial Plants Corporation, isn't that so?	
13	A It was the first time I heard of it, ges. I	
14	am not sure I heard of it on the 10th even. I told you	
15	earlier I didn't make the appointment. I met the chairman	
16	of the board of our company who had arranged the appointment	
17	in New York.	
18	Q Do you know when the appointment was_made?	
19	A I really don't.	
20	Q Do you dispute it was made on the 10th?	
21	A I don't dispute it. I don't know when it was	
22	made.	
23	Q Anyhow, so you met him on the 13th, that Friday,	
24	and you told him that you wanted the appraisal done right	
25	away and he said to you that he had had some scheduling	
	Tod onde he had had some scheduling	

•	1	qb-96 Klein-cross
0	2	difficulties, did he not say that to you?
•	3	A Yes.
Č	4	Q And what did you ask him to do?
	5	A I asked him to see if he could rearrange his
•	6	schedule so that he could inspect the Time & Micro plant on
	7	Monday.
	8	Q And he told you that it would take one day,
	9	didn't he?
	10	A Yes, he did say that.
	11	Q And you had never seen this man before then, had
	12	you?
0	13	Who is "this man"?
	14	Q Mr. Thaler.
	15	A No, I had never seen Mr. Thaler before the
,	16	meeting.
	17	Q Had you ever done any business with Industrial
	18	Plants before then?
	19	A Not to my recollection.
	20	Q Had you ever heard of them before that day?
	21	A I don't think I had, no.
	22	Q Did you engage Mr. Thaler whom you had never
)	23	seem before in behalf of this company which you had never
	24	heard of before to give you this appraisal on the very
0	25	following Monday, isn't that an absolute fact?

Had you made any overtures to help Time & Micro get assistance from somebody else?

- There was no business reason to do that. A
- You didn't, did you?
- No.

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Q Did Mr. Thaler call you up over the weekend and say okay, I have cleared my desk for you for Monday, or words to that effect?

1 gb-99 Klein-cross 2 A Right. And he went down there on that Monday, right? 0 Right. 5 And before he did that you had already given him, had you not, counterparts or copies of Plaintiff's 7 Exhibits 1 and 1A which is to say the Hirschmann letter 8 and the appraisal report and the detailed appraisal report of Hirschmann, isn't that so? 10 I gave him --11 Hadn't you given them, yes or no? Did you 12 give them to him? 13 Yes, I gave them to him. 14 If you can answer yes or no, it will save time. 15 Will you try your best to do that for me? 16 Yes. 17 Thank you. 18 So he took these reports with him over the 19 weekend, isn't that so? 20 MR. BRILL: I object. Mr. Klein can't possibly 21 know what Mr. Thaler had with him over the weekend. 22 Did you give Mr. Thaler those two reports --23 THE COURT: Please read the question so we know what we are talking about. 25 (Question read.) A-1232

> SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

1	qb-100 Klein-cross	
2	A I don't know whether he did.	
3	Q He didn't leave them behind when he left on	
4	his meeting on Friday, did he?	
5	A No.	
6	Q You did more than that. You even arranged	
7	to have somebody go down with him to this plantaididn't you,	
8	Mr. Klein?	
9	A Yes, I didl	
10	Q You arranged to have Harry Haakenson go down with	
11	him, right?	
12	A Yes.	
13	Q He was the man that had been hired by your	
14	company, did you say from Bulova?	
15	A I can't recall where he had worked just prior	
16	to coming there.	
17	Q But he was the plant expert in timing mechanisms	
18	that you described before, right?	
19	A Right.	
20	Q And you sent him along to go with Mr. Thaler	
21	the appraisal on Monday, right?	
22	A Right.	
23	Q Andyou expected him to do more than just show	
24	Mr. Thaler where the plant was, isn't that so?	
25	A I told him to	
	A-1233	

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

A-1234

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

gb-102

Klein-cross

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Did you tell Mr. Haakenson the status of your fuse contract negotiations with the Government? In a general way.

In a general way, yes.

And you instructed him, did you not, to bring Mr. Thaler up to date as much as he could from the state of his own knowledge on what he would find down at the plant in Strasburg, Pennsylvania, isn't that essentially so?

No.

What is not so?

I told Mr. Thaler that Haakenson knew where the equipment was located in the plant. There was also some equipment to be appraised that was not in the plant, it was stored in the warehouse in the same city as the factory was located in, and I told Thaler that Haakenson knew where that equipment was also located, and he could assist him there. Additionally I told Mr. Thaler not to accept any opinion that Haakenson has on the value of the equipment, that I wanted him -- I wanted to receive back his independent value of the equipment.

I heard you sotestify during your direct, Isn't it a fact, Mr. Klein, that Mr. Haakenson was familiar with the nature of the machinery and equipment at the plant in Strasburg, Pennsylvania?

1	qb-103 Klein-cross
2	A Yes.
3	MR. BRILL: Objection.
4	
5	Q I can't hear you. Speak up.
6	
7	Q I asked you the question. What is the answer t
8	it?
9	A You have to
10	MR. BRILL: The witness asked for the question
11	to be reread.
12	MR. STREAM: It would be helpful if he kept
13	his voice up.
14	THE COURT: Yes, keep your voice up, Mr. Klein.
15	This is a small room, but it is hard to hear sometimes in
16	it.
17	Q Are you amused, Mr. Klein, youare smiling there
18	now. Is there something we have done that amuses you?
19	A No.
20	Q Mr. Haakenson was generally familiar with the
21	nature of the machinery and equipment of that Strasburg
22	plant, wasn't he?
23	MR. BRILL: Objection. Characterization
24	of Mr. Haakenson's knowledge, generally familiar, what
25	does that mean?

1	qb-104 Klein-cross
2	nacan cross
3	MR. STREAM: I protest that form of objection,
	your Honor. It is unprofessional and he knows it.
4	MR. BRILL: How can the witness answer a
5	question like that? It doesn't mean anything.
6	THE COURT: I overrule your objection, counsel.
7	I think you can wait a little while before you strike into
8	these objections at times.
9	Q Will you answer the question.
10	A Haakenson knew what type of equipment was down
11	there and he understood how it could be used to manufacture
12	a product, yes.
13	Q To manufacture what?
14	A A product.
15	Q Did he know how it could be used to manufacture
16	timing mechanisms or fuses?
17	A Yes, he knew that.
18	Q He was a man you sent down with Mr. Thaler on
19	that Monday morning, right?
20	A Yes.
21	
22	and down of merropeer as far as
23	you know, isn't that so, from New York to Pennsylvania?
24	A I don't think that is the way they went.
	THE COURT: Please speak up, sir.
25	A I think Mr. Thaler flew somewhere into New Jersey

1	qb-105 Klein-cross
2	by helicopter. I think it was a Newark Airport and I
3	think he went from there by car with Haakenson.
4	Q All right. And on August 15, that evening
5	when Mr. Thaler Mr. Thaler called you, right?
6	A Right.
7	Q And he told you that he wasn't ready with
8	his appraisal, isn't that right?
9	A Yes.
10	Q You had asked him, had you not, to try his best
11	to finish it that very day, right?
12	A Yes.
13	Q But he told you, did he not, at least this was
14	your testimony yesterday, that the plant contained, and
15	I quote your testimony yesterday, I believe accurately: "It
16	contained the finest collection of precision machinery
17	under one roof he had ever seen in his life, " didn't he tell
18	you that?
19	A Words to that effect, yes.
20	Q You cannot disprove that, can you, sir?
21	A No, I
22	MR. BRILL: Objection.
23	THE COURT: Sustained. It is unnecessary.
24	YOu asked him that before in effect.
25	Q I say can you dispute that statement that
	Mr. Thaler made? Can you?
	A-1238 SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

Klein-cross

qb-106

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1	qb-107 Klein-cross
2	A Yes.
3	Q With Mr. Thaler from where, New York environs?
4	A I assume it was from New York.
5	Q And you were out in California, Los Angeles,
6	right?
7	A Right.
8	Q And that was the time, you say, that he told
9	you that the fair market value of the machinery and equipment
10	at the plant was around \$900,000, he toldyou that, didn't
11	he?
12	A He told me the high side figure was \$900,000.
13	Q Is that the words he used, the high side?
14	A I don't remember the descriptive words he
15	used. I remember the amount.
16	Q That is what I asked you. He told you, did he
17	not, that the fair market value of the machinery and equip-
18	ment was approximately \$900,000, right?
19	A I don't remember whether he said it was fair
20	market value. He said it was \$900,000.
21	Q Let me see whether this will refresh your recol-
22	lection and I refer to Question 31 on page 8 and your answer
23	to it:
24	"Q What was said during this conversation
25	"A There were two conversations in the night he

1	47-108 Klein-cross	
2	was in the plant, in the Micro plant, he told me he could	
3	not give me any figures and that he wanted to return to	
4	his office before giving a final figure. I talked to	
5	him again probably on the next day andhe told me that the	
6	fair market value of the machinery and equipment was	
7	approximately \$900,000."	
8	I stopped in the middle of the sentence. Does	
9 `	that refresh your recollection as to that aspect?	
10	A Yes.	
11	Q Did he not also continue and say, according	
12	to your testimony that the forced liquidation value was	
13	about \$500,000, right?	
14	A Yes.	
15	Q And did you understand the term "forced liquida-	
16	tion value"?	
17	A Yes.	
18	Q Did you understand that to mean a sale at forced	
19	sale in liquidation at public auction under an auctioneer's	
20	hammer, do you understand that to be the meaning of the	
21	term?	
22	MR. BRILL: Objection.	
23	THE COURT: Overruled.	
24	Q Answer the question.	
25	A I am not sure that I did understand it to	
	A-1241	

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE

A Yes.

those words?

23

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agreement with Time & Micro " Do you remember using

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qb-110

1	qb-112	Klein-cross
2	Q	Are those originals, Mr. Klein?
3		They aren't, are they?
4	4	It is a telefax receipt of it.
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jqbr 1 113 Klein-cross 2 Q Let me show you, Mr. Klein, something else. (Defendant's Exhibit E was marked or 3 identification.) 4 Q Just look at the physical composition of Defendant's 5 Exhibit E for identification. 6 7 Tell me whether you cannot recognize that as in fact an origina! telegram form? 8 9 MR. BRILL: Objection. That is a totally irrelevant question. 10 MR. STREAM: I will connect it up. We will 11 12 see. 13 Look at it. Q 14 A Yes. 15 That is a telegram in original form, isn't it? 16 It appears to be. You can't say the same for plaintiff's Exhibit 3, 17 can you? It is a copy, isn't it? 18 19 THE COURT: 3? Q Plaintiff's 3, it is a copy, isn't it? 20 21 No, this comes over the telephone. It is a 22 Telefax. Over the telephone to whom? 23 Q 24 To a Telefax machine located within Ajax. Would you be good enough to point out on that 25 Q

by Ajax? By Ajax, did you hear the last two words? 3 MR. BRILL: I object. There is no testimony 5 that Ajax time stamped --6 MR. STREAM: We are going to find out. 7 MR. BRILL: You can't ask the question without 8 a foundation. 9 THE COURT: Overruled. Let him ask the question. I don't understand your policy here. 10 11 MR. BRILL: The objection is that the --12 MR. STREAM: The dates are important and counsel knows it and he will differ with me but he won't succeed. 13 14 THE COURT: I have overruled your objection. 15 Sir, there isn't any kind of an Ajax time stamp on Plaintiff's Exhibit 3, is there? 16 17 A No. There isn't anything on Plaintiff's Exhibit 3 that 18 tells this Court and jury when that document, if that 19 physical one was ever received at Ajax, was actually 20 received at Ajax, is there? 21 22 MR. BRILL: Objection. The document speaks 23 for itself. THE COURT: No, it does not. Your objection is 24 overruled. He has it before him. Answer the question. 25 A-1247

Klein-cross

telegram where you have any kind of a date or time stamp

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jqtr 3 Klein-cross

A There is a date on this document of when it was received.

- Q I beg your pardon?
- A There is a date on this document.
- Q When it was received at Western Union, isn't that so?

THE COURT: Is there any date when it was received by Ajax, that is the question.

Q That is the question, at Ajax's plant in the City of Love or the City of Industries, wherever it is, at Ajax's plant, there is nothing on that telegram that shows that, is there?

- A There is not a receipt stamp on it.
- Q Say it loud enough, I want the jury to hear you.
- A There is not a receipt stamp on it.
- Q Neither of the day or hour, isn't that so? Right?
 - A Right.
- Q Say it loud, I want them to hear you. Sir, what is your answer?
 - A There is no stamp.
- Q But your testimony is or was yesterday that when that telegram marked Plaintiff's Exhibit 3 was received, and not before, you proceeded to close on this so-called loan

1	jqbr 4- 116 Klein-cross		
2	and security agreement with Time & Micro which is Plaintiff's		
3	Exhibit 4 in evidence, right?		
4	A Right.		
5			
6	and the state of t		
7	and longhand dates in the margins of some of the pages. 8/18/66.		
8	THE COURT: On what?		
9			
10	MR. STREAM: Plaintiff's 4.		
11	Q It is on page 1 and again it happens on page 7,		
12	isn't that so? 8/18/66?		
13	A Yes.		
14	THE COURT: Answer please.		
15	THE WITNESS: Yes.		
16	THE COURT: You have to speak up, Mr. Klein.		
	I don't see any reason why you have any throat trouble		
17	today.		
18	Q Let me leave this with you here.		
19	That is a pretty lengthy document, isn't it, by any		
20	standards?		
21	A Yes.		
22	Q And when was this prepared, Mr. Klein?		
23	THE COURT: If you know.		
24	Q If you know.		
25	A I don't remember the exact date.		

1	jqbr-5 117 Klein-cross
2	Q What did you say?
3	A I don't remember the date it was prepared.
4	Q It was prepared over the week or so before, is
5	that about right?
6	A It was prepared prior to the 18th.
7	Q By whom?
8	A By the attorneys for Ajax and attorneys for Time &
9	Micro.
10	Q And who were the attorneys for Time & Micro?
11	A I can't recall the name of the firm. The one
12	attorney, Mr. Weissman, was a member of a Philadelphia law
13	firm that represented them. He was in California with
14	Mr. Shriro during the drafting of this.
15	Q And who represented Ajax?
16	A The attorneys for Ajax drafted the agreement and
17	Mr. Louis actually represented Ajax on the drafting and the
18	signing of this agreement.
19	Q I repeat my question, who was the attorney for
20	Ajax?
21	A Pardon me. I didn't hear your question. Edward
22	Sanders.
23	Q Edward Sanders of California?
24	A Yes.
25	Q Mr. Klein, yesterday I think you said that you

A-1251

1 jqbr 7 Klein-cross 2 You have to answer that question. Q 3 MR. BRILL: I object. There is a confusion between the word day and date in the question. 5 MR. STREAM: I couldn't have asked a clearer 6 question. I will repeat, you have no independent recol-7 lection as you sit here today as to when , as to day or 8 hour, that you received that telegram which you say you 9 got, namely Plaintiff's Exhibit 3 in evidence, isn't that a 10 fact? 11 I remember receiving that on the 18th of A 12 August. 13 Q I beg your pardon? 14 I remember receiving that on the 18th of 15 August. 16 Do you keep a diary? Q 17 A I had a diary, yes. 18 Q Did you make an entry in some diary or did you 19 make some memorandum that reflected that? 20 A That telegram was tied into the signing of this 21 document. 22 That wasn't my question. 23 MR. BRILL: That is the answer. He explains 24 how he remembers what day it was received. 25 THE COURT: Read the last question and the last

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	1	jqbr 8 Klein-cross
	2	answer.
_	3	(Read.)
	4	THE COURT:: STrike it out, disregard it.
	5	Q Now answer the question.
	6	Do you have a diary entry or a memorandum or
	7	a scrap of paper which contains any record of the date
	8	or hour when you say you received that telegram, Plaintiff's
	9	Exhibit 3, yes or no?
	10	A No.
	11	Q At what time of the day was this closing on the
	12	contract, if you know?
\circ	13	A I don't know.
	14	Q You weren't present, were you?
	15	A No.
	16	Q You didn't see Mr. Louis that day, did you, as you
	17	remember it?
	18	A I don't remember whether I saw him that day or
	19	not.
	20	THE COURT: Will you please speak up.
	21	A I don't remember whether I saw him that day or
	22	not.
)	23	Q Do you remember the first time you saw that contract
	24	that is before you, Plaintiffs Exhibit 4, and I mean saw
	25	it signed, sealed and delivered?
		A-1253
	11	n 14J)

1 jqbr 9 Klein-cross 2 Ask me your question again. 3 Q Do you remember the first time you saw 4 Plaintiff's Exhibit 4, that so-called loan and security 5 agreement between Ajax and Time & Micro for the first time 6 as a signed and executed agreement? 7 I can't tell you the day or the hour I saw it, 8 no. 9 Q By the way, this document is more than just a loan 10 and security agreement, isn't it? Look through it. Just 11 glance through it and while you are doing it note if you 12 will paragraph 7 on page 5 and if you will read it to yourself 13 so that I can ask you a question about it. Have you read 14 that paragraph? 15 A Yes. 16 Read the first paragraph on the first page, please, 17 paragraph 1 on page 1. And let me know when you have done 18 that. 19 Yes. 20 The first paragraph in essence reads as follows 21 and you correct me if I am wrong "One, this is the agreement 22 between Ajax and Time & Micro marked Plaintiff's 4 in 23 evidence and which is claled a loan and security agreement. 24 Paragraph 1, Ajax will lend to Time or at Ajax option, 25 obtain a loan for Time, in the sum of \$270,000 for a period

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE

jqbr 10 122 Klein-cross

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jqbr 11 123 Klein-cross

Q Would you mind telling me how this plant which you told me was inactive at that particular point in time when you entered into that agreement was going to pay off this loan in 120 days? Tell that to the jury. Take your time and tell it to the jury.

A I don't know who they were going to pay off the loan in 120 days.

Q Unless it came under the subcontract from you to them from Ajax to Time & Micro as prime contractor, isn't that right?

A Not necessarily.

Q Not necessarily?

THE COURT: We will have a recess and I wuld like to see counsel for a minute in the robing room.

(Jury left the courtroom.)

(In the robing room.)

THE COURT: Mr. Brill, I want you to go out and talk to this witness. He is your witness and I want you to tell him that the Court requires him to speak up and I am not going to have to advise him of that about every question.

I am through with it. There are remedies for such situations.

MR. BRILL: I don't know what you mean by remedies and I don't know what you mean by failing to speak

A-1256

1 jgbr 12 Klein-cross 123a . qu I am sitting behind the jury and I can hear what he 3 is saying perfectly. 4 THE COURT: You are nearer and you are used to his 5 6 voice. 7 MR. BRILL: Perhaps we should ask the jurors. 8 MR. STREAM: I cannot hear him. 9 THE COURT: Counsel states he cannot hear him. 10 MR. BRILL: I will certainly ask him to speak 11 up. 12 THE COURT: Please do. If you want to know what the alternative is it might be a contempt proceeding. 13 That is all I have to say. 14 MR. BRILL: All I can do is say to speak up. 15 I don't see how it would be contemputuous of me --16 THE COURT: You don't need to say that but you 17 can tell him he hasn't responded to the Court's request. 18 MR. BRILL: I will be happy to do so in the 19 presence of the court reporter to show that I am willing 20 to obey the instructions. I certainly would not be in 21 22 contempt of the Court. 23 THE COURT: I didn't say you were in contempt. MR. BRILL: I will tell him, your Honor. 25 THE COURT: Tell him and come back later and tell A-1257

jqbr 13 1 Klein-cross me that you have. 2 (Pause.) 3 THE COURT: Now, Mr. Brill, have you asked your 4 witness to speak up? 5 6 MR. BRILL: Yes, your Honor. I have told him that there is a difficulty in hearing him and I have directed 7 him to speak as loudly as he can. He said he would. 8 9 THE COURT: That is enough. MR. BRILL: I am going to ask him to also try and 10 keep his head up so that he doesn't talk down but rather 11 talk out to the jury. 12 13 THE COURT: Yes. 14 (Recess.) (In open court; jury present.) 15 BY MR. STREAM: 16 Q Now, sir, that provision on page 1 of Plaintiff's 17 Exhibit 4 continues and provides, doesn't it, that if Ajax 18 cannot obtain the loan for Time & Micro then the loan will 19 be made to Tine & Micro directly by Ajax, do you see that 20 21 there? 22 A Yes, I do. Q And it talks in the next paragraph about securing 23 the loan whether through a bank or otherwise with a 24 mortgage on the machinery and equipment, isn't that right? 25

A-1259 .

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE

jqbr 15. 126 Klein-cross
zation of the facts. I think Mr. K. ... n ought to be shown something.

THE COURT: What does he need to be shown? The objection is overruled.

Q Isn't that a fact? That that option on the part of your company to buy the plant upon Mr. Shriro's date, and he was the controlling stockholder you told the 'ury, was fixed at \$120,000 and that is just about half of what the Industrial Plants appraisal came in at, isn't that right?

MR. BRILL: He changed the question from Hirschmann praisal to industrial plants.

Ω Industrial Plants appraisal, Plaintiff 6, fair market value, total in place value, \$1,560,891, do you see it?

A Yes.

MR. BRILL: The agreement is not to purchase the plant but the machinery and equipment in the plant. The further objection is that the relationship of the two numbers speak for themselves.

THE COURT: I will sustain the objection.

I don't see any materiality to the objection but I will sustain it.

MR. BRILL: Thank you, your Honor.

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1 jqbr 17 Klein-cross 2 has been asked. 3 MR. BRILL: I am not objecting to thequestion. 4 I would like the answer and question reread. I missed 5 it and I apologize. 6 THE COURT: Apology received. Read the question 7 and answer. Don't do it again. 8 (Question and answer read.) 9 Sir, this contract document which is something more 10 you acknowledge than just a loan and security agreement, 11 right? 12 THE COURT: It speaks for itself, counselor. 13 This document, whatever it's name is, which is 14 Plaintiff's Exhibit 4, was signed on the 18th of August, 15 do you remember that? 16 A Yes. 17 At least that is the date it says, right? Q 18 A Yes. 19 Because you weren't there, right? Q 20 A I am not sure whether I was ther of not. 21 There is no doubt, is there, sir, cat on that date 22 putting aside the telegram, we have talked about that, 23 you hadn't gotten the appraisal of Industrial lants Corporation, had you? 25 MR.BRILL: Objection, your Honor.

A-1262

130 Klein-cross 1 jgbr 19 2 Yes. 3 So we have established that the transmittal letter reached your plant or your factory or your office 4 in the City of Industry on August 22, 1966, right? 5 6 Yes. 7 And the contract we have been looking at, Plaintiff's Q 8 Exhibit 4, was dated August 18th, right? 9 A Yes. 10 And the letter that I have referred to, Plaintiff's Exhibit 5, had with it the appraisal itself, didn't it? 11 12 A Yes. 13 And that appraisal has been received in evidence as Plaintiff's Exhibit 6, isn't that so? I show you it now. 14 Isn't that it? You don't remember? Look at it again. 15 16 THE COURT: What is the question particularly? 17 Q Isn't that the appraisal which accompanied the letter, sir? The letter is Plaintiff's Exhibit 5 and that 18 19 appraisal is Plaintiff's 6. 20 A Yes. 21 Q And in addition to that you also received on the 22 same day, August 22nd, this invoice from Industrial Plants 23 which your counsel marked into evidence as Plaintiff's Exhibit 14, isn't that so? 24 25 A Yes.

1 jgbr 20 Klein-cross Q And the appraisal which was Plaintiff's Exhibit 6 reached a bottom figure which said total fair market value, 4 \$919,085, right? 5 A Yes. 6 Q And then in a note added additional for in-place 7 value, \$137,806, right? 8 Yes, that is correct. 9 Q And ended up with a total in-place value of 10 \$1,056,891, isn't that right? 11 A Yes. 12 Q And the telegram which came the same day that 13 the letter and the appraisal arrived and it did come the 14 same day, didn't it? 15 MR. BRILL: Objection. There is no such 16 testimony in any telegram in evidence in this case came 17 the same day. 18 MR. STREAM: Don't be upset, I misspoke. I won't 19 let it happen again. Withdrawn. 20 Q And the invoice which came , and it did come the same 21 day as the letter of transmittal and the appraisal, isn't that 22 so? 23 A Is it stamped? 24 Q Don't you remember? It is dated August 19th. 25 Did you get it before you got the appraisal?

1 Klein-cross jgbr 21 2 THE COURT: By the way, I will sit until at least 3 4:30 today. A It is dated the 19th but there is no stamp on what 5 date it arrived. 6 Q It is dated the 19th, okay. It is on the letterhead 7 of Industrial Plants, isn't that right? 8 A That is right. 9 Q And August 19th was a Friday, will you take my 10 word for it? You don't have to. Here, you tell me what 11 was August 19, 1966. Look at Plaintiff's Exhibit 25 that 12 counsel put in evidence, the calendar. 13 MR. BRILL: I am glad you found some use for it. 14 THE COURT: The calendar is the same for both 15 plaintiff and defendant in this action. 16 MR. BRILL: One thing we agree on, your Honor. 17 MR. STREAM: We don't dispute that, Judge. 18 A What date did you ask me to verify? 19 August 19, 1966. Q 20 A It is a Friday. 21 So the first date you could have gotten it would Q 22 have been the following Monday, right? 23

A Right.

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0 What was that day? Look at the calendar.

The 22nd.

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	1	jqbr 22 132a Klein-cross
)	2	Q Now then, that was the earliest date that you can
	3	recall having received this invoice, Plaintiff's 14,
	4	right?
	5	A I don't recall the date I received the invoice.
	6	I acknowledged receiving the appraisal on the 22nd.
	7	Q Do you deny
	8	A I don't deny. I just don't remember.
	9	Q It was received, wasn't it?
	10	A It was received, yes.
	11	Q Did you notice that the red for professional
	12	services rendered in connection with the appraisal of
\supset	13	Time & Micro Instruments Corporation, total fair market
	14	value \$919,085 and then the computation of the appraisal
	15	fee which came down to \$4,422.71. Didyou notice that
	16	when you got it?
	17	A Yes.
	18	Q Fair market value in the invoice?
	19	A I am not disputing what the invoice says.
	20	I received it in that form.
	21	Q And you remember seeing the words fair market
	22	value, right?
)	23	A Whatever it says I saw.
~	24	Q You tell me. Did I read it right to the jury
	25	and the Court, fair market value?

jqbr 23 Klein-cross

A Yes, that is correct.

When you gave Mr. Thaler his instructions on that Friday, August 12th, in anticipation of the appraisal thathe was required to make as soon as possible which turned out to be the very following business day, Monday the 15th, didn't you instruct him according to your testimony to appriase the machinery individually by items, isn't that what you said you asked him to do?

A Yes.

Q Didn't you testify even beyond that and say that you wanted an itemized appraisal of each piece of equipment and not an appraisal of the entire unit value as a watch manufacturing plant, didn't you do that?

A Yes.

Q And that was precisely the words that you employed in your deposition, isn't that so? Question 15 at page 5, line 15:

"Q What if anything did you tell Mr. Thaler about the nature of the appraisal you wanted him to make?

"A I told Thaler I wanted an itemized appraisal of each piece of equipment and not an appraisal of the entire unit value as a watch manufacturing plant," isn't that what you told him?

A Yes.

Klein-cross 1 jgbr 24 And you say that was for the purpose of this agreement, this Time & Micro security agreement, right? 3 Right? Right. 5 But you didn't have that, did you, that individual 6 7 item by item --THE COURT: Your pronouns are confusing, counselor, 8 9 But Ajax didn't have that item by item valuation on August 18th, did it, yes or no? 10 No, they did not have it itemized --11 12 At best you had a telegram, right? Right. 13 A Now the appraisal, and I will leave Plaintiff's 14 Exhibit 6 which is the appraisal of Industrial Plants 15 Corporattion of the Time & Micro facilities, which was made 16 following the August 15th trip, and when I refer to the 17 appraisal now that is what I am referring to, not Hirschmann 18 but Industrial Plants --19 MR. BRILL: For the sake of clarification 20 I think the term appraisal should be deinfed as including 21 22 both that document and the covering letter defining --

THE COURT: If he asks a question and you object to it as to form you may say so but otherwise

MR. STREAM: No way, your Honor.

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jqbr 25 Klein-cross

I am not entertaining any objections of a general sort such as you might say.

Q The appraisal is before you and it is called appraisal, isn't it, on the first page?

A Yes.

Q That was Plaintif 's Exhibit 5. That is the appraisal prepared by Industrial Plants for the Time & Micro facilities, right?

A Yes.

Q That appraisal shows on the last page fair market value. We have covered that.

You noticed that, didn't you?

A Yes.

Q In-place value, right?

A Yes.

Q And you told us, did you not, and you correct me if my recollection is wrong, you told this jury, did you not, that an in-lace value, fair market value appraisal, means an appraisal of machinery and equipment in place at a plant ready for operation assembled as a unit, right?

MR. BRILL: Objection.

THE COURT: Overruled.

A I don't remember telling him what in-place value meant.

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Klein-cross

Q Isn't that your understanding, sir, as the executive vice president at the time of this company, wasn't that your understanding of the term, namely the fair market value of the machinery and equipment in place at the plant as a unit, ready to function as a going operation, isn't that what you understand fair market value in place, on site to mean? Answer yes or no.

A Essentially yes.

Q Nothing in this appraisal before you, Plaintiff's 5, shows any forced liquidating values, does it?

A No.

MR. BRILL: Objection.

Q And there is no reference in the invoice which we have received in evidence as Plaintiff's Exhibit 14 to force liquidating values, is there?

A No.

Q Just fair market value, right?

A Yes.

Q And then shortly after you received that appraisal you had a discussion with your confrere, your associate, the president of the company, Mr. Louis, right?

A Yes.

Q And you discussed the appraisal with him, isn't that so?

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A Yes.

Q Then he wrote to Mr. Thaler the letter which was received in evidence as Plaintiff's Exhibit 7, isn't that right, and note that it is dated August 23, 1966.

A Yes.

Q And in that letter you acknowledged, did you not, the urgency which had companied the conduct of that appraisal by stating to Mr. -- through Mr. Louis' statement, I should say to Mr. Thaler, that "It was an imposition", aren't those the words in the letter "It was an imposition, Mr. Thaler, to ask you to appraise this plant on such short notice, "right?

A Yes.

MR. BRILL: Objection. These documents all speak for themselves. There is no need for Mr. Klein to characterize the statements.

Q Did you agree with that statement?

A I am not sure I agree with the document. I am confirming what it says.

Q Did you agree it was an imposition to ask Ar. Thaler to appraise the plant on such short notice?

A I am not sure I do agree it was an imposition.

Q Do you agree with Mr. Louis' statement in the same sentence but since Time & Micro was so anxious to come

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Klein-cross

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to some preliminary understanding at an early date and since we had to have some basis upon which to go we had to ask for your prompt cooperation for which we are thankful, do you agree with that statement?

- A Essentially, yes.
- Q I didn't hear you, sir?

 THE COURT: He said yes; speak up.
- Q Mr. Louis in the third paragraph says that he had a discussion with you about something that you also wanted for your information, do you see that?

MR. BRILL: Objection. That is not what the letter states. We are running into quicksand here because of Mr. Stream's characterization and comments on a letter which speaks for itself. The letter is clear.

MR. STREAM: Very clear. Let me help you, Mr. Klein.

THE COURT: Objection overruled. I don't know about any quicksand.

Q You knew that he was going to write this letter, didn't you, Mr. Louis?

A Yes.

Q In it he says in the third paragrah, as Mr. Klein discussed with you, as Mr. Klein -- he is writing to Thaler -- as Mr. Klein discussed with you, meaning Mr. Thaler,

- 1	139
1	jqbr 29 Klein-cross
2	we would also like for our own information what in your
3	opinion the equipment would bring under a forced sale.
4	Do you see that sentence?
5	A Yes.
6	Q That is in addition to a fair market value
7	appraisal on-site in-place, right?
8	MR. BRILL: Objection. Mr. Stream is mixing up term
9	here.
10	THE COURT: I don't think so. Overruled.
11	Q Right?
12	THE COURT: He is asking about this former
13	officer's interpretation of it.
14	Q Isn't that something in addition to, different
15	from, distinguishable from fair market value, on-site in-
16	plate?
17	A Forced sale is different, yes.
18	Q It is a totally different animal, isn't it?
	A Yes.
19	
20	and appearant you have belole
21	you, is it?
22	A No.
23	MR. BRILL: Let the record reflect he has before
24	him only the blue bound conv of Plaintiffic Fubility

MR. STREAM: Which is the appraisal of Industrial

jqbr 31 Klein-cross right?

A Yes.

Q That is a sale under orderly conditions, isn't it?

A I am not that much of an expert on the terminology of the liquidating industry.

expertise or general knowledge as a businessman with all the experience you have including your term as the president of some company you are not connected with makes it impossible for you to tell the answer to that question say you don't know how to answer it. If you can answer, answer it for me. I will put it again, a forced sale under an auctioneer's hammer which you described as a forced sale in liquidation is different from a sale or a liquidation at convenience, isn't it?

MR. BRILL: Objection, your Honor. There is no such terms in this letter as forced sale under an auctioneer's hammer.

MR. STREAM: I am using those terms and I am asking the witness that question if you can answer it.

Can you answer it?

A I can't answer that.

Q You did notice that Mr. Louis used the term forced

1	jqbr 32 142 Klein-cross
2	sale, right?
3	A I don't challenge anything in the letter.
4	Q I beg your pardon?
5	A I don't challenge anything written in the letter.
6	Q Just answer my question. You notice he used the
7	words "forced sale," right?
8	A Yes, he used the words "forced sale."
9	Q Then he used a different term when he dealt with
10	Industrial Plants as auctioneers and liquidators he said
11	purchase of property "to be liquidated at its convenience," and
12	that is different from a forced sale, isn't it?
13	MR.BRILL: I wish Mr. Stream would read the whole
14	sentence. It is out of context and highly misleading.
15	The second sentence refers to what Industrial Plants would pay
16	for what Time & Micro
17	MR. STREAM: I am going to read the whole thing.
18	THE COURT: Let us go onwithout any more talking
19	about it.
20	Q I quote the paragraph. "As Mr. Klein discussed
21	with you, we would also like for our own information what
22	in your opinion the equipment would bring under a
23	forced sale. Sice I understand you are also auctioneers and
24	liquidators we would like to know what your organization
25	would be willing to pay for the equipment of Time & Micro

jqbr 33 Klein-cross

to be liquidated at your convenience."

Have you got that sentence in mind, those two sentences, okay? Are you able to distinguish based upon your own general knowledge as a businessman between Mr. Norman Louis of the term forced sale and the term liquidated at your convenience? Can you distinguish between those two terms in your mind?

A I heard your words and there is a difference in the two sentences, yes.

Q A forced sale -- doesn't a forced sale by your own general business experience mean to you a sale in liquidation under an auctioneer's hammer or at auction?

A Not necessarily.

Q And a sale or a liquidation at convenience, doesn't that mean over a period of time? If you don't know say you don't know.

A I don't know.

Q In any event, that is what Mr. Louis wanted, isn't that so, he wanted the answer to those questions, right?

A That is what the letter says, yes.

Q And that is after he got and you got the fair market value appraisal, correct?

MR. BRILL: Objection, characterization of the document.

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Klein-cross

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THE COURT: It isn't a characterization, it is after the time.

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MR. BRILL: The document has fair market value appraisal.

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MR. STREAM: The witness described it as that.

After you got the fair market value appraisal in front

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of you, Plaintiff's 5, right? Mr. Louis asked for the

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answers to his questions in this letter of his, Plaintiff's

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Exhibit 7 after he got the fair market value appraisal, isn't

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that so?

not?

he?

A He got something in addition to this.

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Q I am sure he got lots of things. He may have

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gotten mail from other people but my question is after he

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got the appraisal that is in front of you, that document,

16

that brochure, Plaintiff's 5, he wrote this letter, did he

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A Yes.

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Q And he asked for something in addition, didn't

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A Yes.

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and the letter of transmittal, which is Plaintiff's 5,

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after Ajax received Plaintiff's 5 and Plaintiff's 6,

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which are both the appraisal and the letter of transmittal,

After you got the appraisal that was before you

1	jqbr 35 145 Klein-cross
2	okay?
3	A Yes.
4	Q After Ajax got those documents and you had made the
5	deal with Thaler, right?
6	Louis hadn't, had he?
7	A I gave Thaler the engagement to do the appraisal.
8	Q You engaged him?
9	A Rkght.
10	Q And you did it orally, isn't that so?
11	A Yes.
12	Q And after you got those documents did you write
13	a letter to Mr. Thaler or to Ajax and say this isn't what
14	we asked for and we are not going to pay for it, it is wrong,
15	we didn't order it, did you do that?
16	MR. BRILL: Objection. Irrelevant.
17	The question of payment as we discussed is not
18	relevant to this case.
19	MR. STREAM: This goes to the question of whether they
20	got what they ordered. We are finding what the agreement
21	was.
22	MR. BRILL: There may be reasons for payment for
23	something as Mr. Stream well knows.
24	THE COURT: I have listened to your objection.
25	I want to hear the question and the answer stated by the
	7-1200

146 1 igbr 36 Klein-cross 2 reporter. 3 (Question read.) THE COURT: I will take the answer. 5 No, I called them though --Q My question, sir, squarely -- remember 7 I told you before, the Court will see to it that your counsel will help straighten everything out --9 I didn't write him a letter, no. 10 Did Mr. Louis write a letter and say "I reject 11 this appraisal, I dien't ask for this kind of appraisal," 12 did he do that? 13 No. 14 Instead he wrote this letter, Plaintiff's 7, asking 15 also for something else, isn't that so? 16 MR. BRILL: Objection. Once again the document 17 speaks for itself. 18 THE COURT: All right, I will sustain that objection. 19 Then you wrote a letter, didn't you, after you re-20 ceived the documents which are in front of you and after 21 Mr. Louis wrote is letter you wrote a letter to Mr. Thaler 22 on August 29th, didn't you, and that was received in 23 evidence offered by your own counsel as Plaintiff's 24 Exhibit 8, isn't that so? A Yes, I wrote this letter.

jqbr 37 Klein-cross

Q By the way, didn't you testify yesterday,
Mr. Klein, and correct me if I am wrong, didn'tyou say
that youhad had a telephone conversation with Mr. Thaler
before you wrote that letter that was before you, Plaintiff's
Exhibit 8?

A Yes, I did.

Q And didn't you say in your conversation with him, and again I believe I have your words verbatim and if I don't you correct me, didn't you say to him "The appraisal does not completely--" I withdraw that.

The appraisal is not completely in conformity with this assignment isn't that the way you put it to Mr.

Thaler on the telephone? It wasn't completely in conformity with his assignment; do you remember implying those words yesterday?

A Yes.

Q You didn't say it was wrong, you said not completely in conformity, right?

A Yes.

Q And then didn't you tell his Honor and the jury that Mr. Thaler said the appraisal indicated true market value, do you remember saying that? Do you remember so testifying yesterday to that effect?

A That I said that Mr. Thaler --

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1	jqbr 38 Klein-cross
2	Q That Mr. Thaler's response to you was the appraisal
3	indicated true market value. You don't remember
4	saying that?
5	A No.
6	Q Do you remember replying as follows to that
7	statem_nt:
8	"We didn't get liquidating values," do you remember
9	telling him that in that conversation?
10	A Yes.
11	Q "We didn't get liquidating values," that is what you
12	told him on the phone?
13	A Yes.
14	Q Meaning you didn't get them in the appraisal or the
15	letter or anything else, did you, thus far? Yes or no?
16	A I had some but I didn't have a liquidating value by
17	item of each machinery.
18	Q You didn't, did you?
19	A No.
20	Q Did you have a liquidating value appraisal of
21	any kind?
22	A The telegram gave a liquidating
23	Q Did it though?
24	A And the letter of transmittal.
25	Q It did you say. Would you be good enough to read

jqbr 39 149 Klein-cross

the telegr am, read the whole thing to yourself, and look at your copy, Plaintiff's 3, and show me the words liquidating value. Just show me those words liquidating value or show me the words forced sale. At this time that is what I want you to do.

MR. BRILL: The question is how he understood what he thought he received.

MR. STREAM: I am not asking for the operation of your mind. I am asking you to tell me whether or not that telegram contains those words, liquidating value or forced sale value.

MR. BRILL: Mr. Stream asked him whether he told Mr. Thaler that he thought that he hadn't received liquidating value.

MR. STREAM: Please, that is not an objection.
THE COURT: Objection overruled.

Q Is there any such statement in there? Yes or no.

A No.

Q Now, sir --

MR. BRILL: The phrase "such statement" is imprecise and I move to strike the last question and answer.

THE COURT: I have heard and ruled on your

jqbr 40 150 Klein-cross objection. I am not going to have any postmortem.

Q Now, Mr. Klein, having told Mr. Thaler in that conversation and before you wrote him this letter, Plaintiff's 8 in front of you dated August 29, keep the time frame in mind, appraisal on the 15th, the letter from Mr. Louis to Mr. Thalser was written on August 23rd, and now you have a letter of August 29th, and this conversation the day before that in which you told Mr. Klein that we didn't get liquidating values and you said Thaler said something and you didn't remember what he said, do you remember so testifying?

A I don't remember his exact words, no.

Q Do you remember then saying to him that Ajax -- again I am quoting yesterday's testimony, Ajax wanted a buy-back agreement if Industrial Plants was willing, do you remember saying that?

A Yes.

Q And Thaler's reply was he will confer with Mr. Sidney Kriser, right?

A Yes, I remember that.

- Q Did you ever meet Mr. Kriser face-to-face?
- A Not until this courtroom.
- Q Do you recognize Mr. Kriser sitting in the courtroom here?

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yesterday if youhad any conversations with Mr. Thaler or anybody at Industrial Plants after the appraisal and you told of this particular conversation among others which you said took place the day before you wrote that letter, do you remember?

Yes.

Q And I told you what you said to the jury yesterday and you saidoyou did say that, right?

Yes.

And you don't remember any other conversation before writing that letter, do you?

No. I don't remember whether I had a conversation.

Would you be good enough to explain to the jury what was the verbal agreement that you were confirming in this letter Plaintiff's Exhibit 8 and the commitment letter which was attached to it? You started off by saying "Confirming our verbal agreement, Mr. Thaler, enclosed is a rough draft of the commitment letter." What verbal agreement had you reached with Mr. Thaler, Mr. Klein? Tell the jury, if you remember.

A The agreement was subject to the approval of Mr. Kriser that Industrial Plants would enter into a standby purchase agreement on the machinery with Ajax.

Is it your testimony, sir, that after saying to Mr. Thaler the day before on the phone that you would like

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1	jqbr 44 Klein-cross
2	his own figure. The letter states it is Mr. Thaler's
3	figure.
4	Q Isn't that your figure, 500,000?
5	THE COURT: Overruled.
6	MR. BRILL: The letter speaks for themselves. Here
7	we go ahead.
8	THE COURT: Maybe we have to go. Let him answer.
9	Q Do you remember the question, Mr. Klein?
10	A You are asking me if the \$500,000 was a figure I
11	put down?
12	Q Who drafted this?
13	A I drafted it.
14	Q You put the figure in, didn't you?
15	A I got the figure from Mr. Thaler.
16	Q You didn't tell us anything about that, did you,
17	until this minute, did you?
18	MR. BRILL: Objection, your Honor,
19	THE OURT: Overruled.
20	MR. BRILL: It is a total misstatement of the
21	testimony. ·
22	Q Did you, sir?
23	A This was a figure discussed in my original
24	conversation
25	Q The day before?

1	jqbr 45 Klein-cross
2	A The day before, yes.
3	Q But you didn't tell his Honor and the jury when
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5	jury yesterday, that you told Mr. Thaler that you wanted
6	to fix a figure at 500,000, you didn't mention that yesterday,
7	did you?
8	A That was his figure.
9	Q You didn't mention it, did you, as a figure that came
10	up during the entire conversation, you didn't mention it
11	once, did you?
12	MR. BRILL: Objection, your Honor. The testimony
13	read from yesterday will show he did mention it.
14	THE COURT: I don't have it, do you have it?
15	MR. BRILL: No, your Honor.
16	THE COURT: Then let the witness answer. He can
17	say no or he doesn't remember or whatever the truth is.
18	A I don't remember.
19	Q Is it your testimony now that Mr. Thaler said
20	to you put a figure of \$500,000 into the proposal, is that what
21	your testimony is?
22	A He and I discussed the figure and mutually
23	\$500,000 was a satisfactory figure from Ajax standpoint.
24	Q I am sure it was. That wasn't the question.
25	My question was: Was during your conversation the day

1	jqbr 46 156 Klein-cross
2	before when you told us how you wanted Ajax to do a buy-
3	back and Thaler said he will confer with Sidney Kriser, you
4	now say that there came up the matter of a dollar figure and
5	that somebody mentioned \$500,000. Who mentioned it,
6	Mr. Thaler or you, if you remember?
7	A I am the one that picked the \$500,000.
8	Q What did Thalser say, I will take it up with
9	Mr. Kriser?
10	A Yes, he did.
11	Q So you fixed that figure, \$500,000, right?
12	A Right.
13	Q Subject to 20 per cent reduction per year over
14	five years, right?
15	A Right.
16	Q Meaning that if they did the buy-up 12 months after
17	thisagreement was signed it wouldn't be \$500,000, it would
18	be 500,000 less 20 percent or only 400,000, right?
19	A Yes, that's right.
20	Q And if it were two years hence it would not be
21	\$500,000, it would be \$500,000 minus 40 per cent or only
22	\$300,000, right?
23	A Essentially right, yes.
24	Q I beg your pardon?
25	A Yes.

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Q Did you have in mind a forced sale in liquidation or a sale under orderly conditions or what?

A If Industrial Plants would give us a commitment to buy it I would have no concern on how they would sell it.

It would be their property to dispose of as they saw fit.

Q But, sir, you are sitting there with an appraisal, letter and agreement, letter appraisal which appraised that machinery at \$1,056,000 fair market value in place on-site ready for use, right?

A That is correct.

Q And yet you offered to sell this machinery to Mr. Kriser's company, Industrial Plants, for \$500,000?

A It was going to have to be relocated. The value of in-place, we had no right to sell the equipment --

Q It would have to be relocated?

A Correct.

Q That means fair market value off site, not on site ready to operate.

A Right.

Q So that is something altogether different again from fair market value on site, isn't it? Right?

A I am not sure that I am an expert --

Q' But you wrote it, didn't you?

A I just said we would take \$500,000, accept it as a

A-1292

158 1 jqbr 48 Klein-cross 2 buy-back commitment --3 Q Did you tell --Meaning the machinery and equipment. 4 5 Did you tell Mr. Kriser and Mr. Thaler that you 6 would take it and allow Industrial Plants to operate on site in place? 8 A No, I did not tell them that. 9 No idea. You meant off site or in liquidation at 10 an orderly sale in any way they wanted but not there, isn't that so? 11 12 That is right. 13 Then, sir, you received a letter from Mr. Kriser 14 in response to that, did you not? 15 Yes. 16 Isn't Exhibit 9 that response? 17 A Yes. 18 And that was the response from Mr. Sidney Kriser of Industrial Plants dated August 30, 1966 in which he said 19 that August 30, 1966 -- in which he said "We, Industrial 20 Plants, are prepared to give you a stand-by guarantee in 21 22 the amount of \$350,000 for a period of 120 days at a fee of 5 per cent on the machinery and equipment located in this 23 24 plant", right? 25 That is what the letter says.

A-1293

SOUTHER

jqbr 49

Klein-cross

Q When you got this \$350,000 figure you knew that it had no relationship to the appraisal that you had gotten from Industrial Plants which are Plaintiff's Exhibits 4 and 5, didn't you?

- A I discussed with Mr. Kriser --
- Q Didn't you hear my question? My question was you knew it had no relationship to that appraisal, did it?
 - A The Industrial Plants appraisal?
- Q I said, you knew that this buy-back offer or this guarantee, stand-by guarantee to pay \$350,000, for 120 days at a 5 per fee was a figure that had no relationship to the fair market value appraisal which you got from Industrial Plants, this is something altogether different, isn't it?
 - A It is much below the fair market value --
 - Q Altogether different, isn't it?
 - A Yes.
 - Q Different?
 - A It is different.
- Q Did you ever write to Mr. Thaler or Kriser and say "Well, if all you are willing to pay is \$350,000 how can I rely upon your fair market value appraisal of \$1,056,000," did you write such a letter?

1	jqbr 50 Klein-cross
2	A Mr. Kriser
3	Q Did you write such a letter?
4	A No.
5	
	and to it within a week of that
6	receipt was to sign a contract as a guarantor with
7	a California bank to guarantee a loan made by the California
8	bank to Time & Micro for \$270,000, right?
9	A Right.
10	Q And that guarantee was marked in evidence, wasn't
11	it, right?
12	A Yes.
13	Q And you remember the contract you made with Time
14	& Micro gave you the right to either guarantee or to lend
15	for 120 days, that is all, do you remember that?
16	A Yes.
17	Q And here you are with an offer from Thaler
18	who says "I will give you a guarantee of \$350,000 good for
19	
	120 days at a 5 per cent premium and you didn't take it, did
. 20	You?
21	A No.
22	Q Instead of that you signed up as a guarantor with
23	the bank for \$270,000, right?
24	MR. BRILL: Objection to instead of as if it were
25	an either or choice. It is what he did.

1	jqbr 51 161 Klein-cross
2	THE COURT: Leave out the word instead.
3	Q Instead, didn't you?
4	MR. BRILL: That is the objection.
5	THE COURT: Leave out the word instead.
6	Q But you did sign up with the bank to guarantee this
7	loan, right, in September?
8	A Yes.
9	Q And by then the government contract was in the
10	offing, wasn't it, because it was signed on October 19th,
11	wasn't it? You got your contract for \$3 million on
12	October 19th, didn't you?
13	A There was a contract, yes.
14	Q On October 19th you gotyour \$3 million government
15	contract, right?
16	A I just said yes, there was a contract.
17	Q On that date, October 19th.
18	A I said yes.
19	THE COURT: Mr. Klein, if you let me say a word,
20	some of the trouble now is because you don't speak up and
21	Mr. Stream doesn't hear and possibly the jurors don't hear
22	and then the question is asked over again. It is confusing
23	and the confusion arises at least in part by your failure
24	to speak loud enough.

Next question.

jqbr 53

Klein-cross

"In the event that Ajax should without legal excuse fail to carry out its obligations under this agreement Ajax agrees to pay the Time in the sum of \$20,000 which sum is agreed upon as liquidated damages for the breach of the agreement." Were you aware of that clause in the contract?

A Yes, I was.

Q So you could have gotten off the hook for \$20,000 any time you wanted, isn't that so?

A Yes.

MR. STREAM: How late does your Honor want to go?

THE COURT: I will go to 4:30 if you want to proceed, if not we will adjourn now.

MR. STREAM: I will go ahead, your Honor. I would like to finish.

THE COURT: Go ahead then.

Q And you are aware you were going to sign the government contract signed on the 16th and having already signed the guarantee and having given up the opportunity to be given a 120-day guarantee that would have matched your oblig ations to Time & Micro you wrote another letter to Industrial Plants dated October 5th, didn't you? Look at Plaintiff's Exhibit 16 and tell me whether you didn't write

A-1298

1 jqbr 54 Klein-cross 2 that letter. A I wrote the letter. THE COURT: The answer is yes. 5 THE WITNESS: Yes. 6 Q And, sir, you wrote that to try to secure a 7 modification of the invoice which you had gotten from 8 Industrial Plants for the work which it had done, isn't that 9 so? 10 MR.BRILL: Your Honor, these letters again speak 11 for themselves. 12 THE COURT: I will allow the question. He wrote 13 it. 14 Isn't that so? 15 I wrote the letter for two purposes --16 Isn't that one of the purposes? 17 You have to restate your question. 18 You said in the first sentence we would like to Q 19 clear youe invoice No. 1762 dated August 19, 1966 for payment. 20 However, I feel there is a discrepancy in the verbal under-21 standing between your Mr. Jesse Thaler and myself 22 regarding the value of the appraisal on which your fee is 23 based. Doesn't that refresh your recollection tat 24 one of the reasons you wrote that letterwas to get a reduction 25 in the fee?

		165
	1	jqbr 55 Klein-cross
	2	A Yes.
	3	Q Didn't you in the next paragraph talk, one column
	4	you wanted to have present replacement costs, isn't that what
	5	you said you had asked for?
	6	A Yes.
	7	Q And you were talking about the appraisal you got
	8	from Industrial Plants, right?
	9	A Yes.
	10	Q And the other column you wanted sound value
	11 ·	of the equipment under a forced liquidation, right?
	12	A Yes.
	13	THE COURT: Let me ask you this question in going
	14	through this phase of it: Were you the officer at
	15	Industrial who submitted the bills of the company and
	16	authorized their payments, sir?
	17	MR. STREAM: The officer of Ajax?
	18	THE COURT: Yes.
	19	THE WITNESS: I would have the responsibility to
	20	authorize payment.
	21	THE COURT: I said Industrial by mistake.
	22	You authorized the payment of these bills or
	23	acted otherwise with respect to them, is that so?
7	. 24	THE WITNESS: That is correct.
	25	THE COURT: That was a part of your job as executive
		7-1200

jqbr 56 Klein-cross
vice presideth then?

THE WITNESS: A contract of this nature, yes.

- Q And you recorded in this letter and you thought you were going to get two kinds of an appraisal, one was fair market value, which is to say present replacement costs, and that is the words you use, right?
 - A Yes.

- Q And also a column showing what the equipment would bring under forced liquidation, right?
 - A Yes.
 - Q And that you never got, did you?
 - A That is right.
- Q And you showed the replacement cost and you referred to it in your letter as \$919,000, right?
 - A Yes.
- And you referred to Mr. Kriser's letter, the guarantee of 350 and did you not in that letter write the following, "Referring to your letter from Mr. Sidney Kriser," and by your letter you mean Ajax, right, or rather Industrial Plants?
 - A Yes.
- Q "Referring to your letter from Mr. Sidney Kriser of August 30th where you stipulated a guarantee of \$350,000 which we know would probably be on the low side but it

1	jqbr 57 167 Klein-cross
2	certainly indicated, it certainly indicated that the forced
3	liquidation vaue should be no more than \$450,000,"those
4	were your words, aren't they?
5	A Yes, they are.
6	Q The forced liquidation value should be no more
7	than \$450,000, right?
8	A That is my words.
9	Q And that you knew, right?
10	A I was doing some negotiating
11	Q That you knew, isn't that so? You wrote it.
12	A I had always been told by Industrial that
13	their figure was 500,000
14	MR. STREAM: I move to strike out the answer.
15	THE COURT: Strike it out.
16	Q That is not my question. You knew that at the time
17	you wrote that letter, that the forced liqudiation value
18	should be no more than \$450,000, isn't that so?
19	Yes or no, Mr. Klein? It is your letter.
20	A I am not sure that it could not have been more than
21	that.
22	Q You wrote here and said but it is certainly
23	indicated that the forced liqudiation value should be no more
24	than \$450,000. Were you lying about it in the letter?
25	A I was just doing some negotiating on a fee based

1	jqbr 58 Klein-cross
2	on a percentage of the variable.
3	Q You were trying to negotiate the fee down.
4	A That is right.
5	Q But you did put the \$450,000 figure in there as
6	the high figure, right?
7	A Yes, I did.
8	Q And you tell his Honor and the jury that was
9	negotating. Despite that letter and that attempt to
10	negotiate you got a dunning letter on November 11th from Mr.
11	Thaler asking you to pay the invoice as billed, right?
12	A Yes, I did.
13	Q And it was marked in evidence as Plaintiff's
14	Exhibit 18. You got another dunning letter on the 28th
15	of November, didn't you, that was marked Exhibit 19.
16	A Yes, I did.
17	Q By then you were in bed with the United States
18	Government, you had your contract?
19	A We had a contract then, yes.
20	Q And he was getting you for the appraisal fee on that
21	emergency job done on August 15th and so finally you had
22	to pay, didn't you? Didn't you?
23	A I authorized the payment, yes.
24	Q Isn't Exhibit 19 which is the letter you got

by the way, this is the letter you got from Mr. Klein,

original invoice for the job that it did on August 15th,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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•	. 1	jqbr 61 171 Klein-cross
(2	
•	3	A I already previously in a deposition said
)	4	THE COURT: Answer it here.
	5	A I can't swear to that. I don't see Industrial
	6	Plants' name on it.
	7	THE COURT: Do you offer it?
•	8	MR. STREAM: I offer it.
	9	THE COURT: Admitted.
xx	10	(Defendant's Exhibit F was received in
	11	evidence.)
	12	MR. STREAM: Can I stop here for the day, your
<u> </u>	13	Honor?
	14	THE COURT: Yes, you may.
	15	Be here tomorrow morning by 10 g'clock
	16	of the jury, and heed my previous instructions. Mr. Witness,
	17	you must return tomorrow morning at 10 o'clock.
	18	(Jury left the courtroom.)
	19	(Trial adjourned to October 16,1975, at
	20	10:00 a.m.)
	21	
	22	
	23	
	24	
,	25	